

United States
Circuit Court of Appeals
For the Ninth Circuit.

In the Matter of SOUTHERN ARIZONA SMELTING
COMPANY, a Corporation, Bankrupt.

M. P. FREEMAN, as Trustee in Bankruptcy of SOUTHERN
ARIZONA SMELTING COMPANY, a Corporation,
Bankrupt,

Appellant,

vs.

JOHN H. MARTIN, as Trustee in Bankruptcy of IM-
PERIAL COPPER COMPANY, a Corporation, Bank-
rupt,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for the District
of Arizona.

Filed

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Clerk.

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Names and Addresses of Counsel of Record.

ELLINWOOD & ROSS, Bisbee, Arizona,
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Counsel for Appellant.

FRANCIS M. HARTMAN, EDWIN F. JONES,
Tucson, Arizona,

Counsel for Appellees. [1*]

*In the United States District Court for the District
of Arizona.*

In the Matter of the SOUTHERN ARIZONA
SMELTING COMPANY, a Corporation,
Bankrupt.

**Petition of John H. Martin, Trustee of the Imperial
Copper Company, a Corporation, Bankrupt,
Claiming Certain Property Scheduled in the
Above-entitled Matter as Property of the
Southern Arizona Smelting Company, Bank-
rupt.**

Now comes John H. Martin, Trustee in Bank-
ruptcy of the Imperial Copper Company, a Corpora-
tion, bankrupt, and respectfully represents to your
Honorable Court:

That the estate of the Imperial Copper Company,
Bankrupt, is the owner of and entitled to the posses-
sion of certain property listed and scheduled herein
by the said Southern Arizona Smelting Company,
the said bankrupt, situate at Sasco, Pinal County,
Arizona, and described as follows, to wit:

*Page-number appearing at foot of page of original certified Record.

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A certain flue dust dump, containing many thousand tons of flue dust, the value of which, your petitioner is informed and believes and upon such information and belief alleges, is approximately the sum of fifty thousand dollars.

A certain slag dump, consisting of many thousand tons of slag, the value of which, your petitioner is informed and believes and therefore alleges, is approximately the sum of fifteen thousand dollars.

That the facts upon which your petitioner bases this claim of ownership and right of possession of said property for the estate of said Imperial Copper Company, a corporation, [2] bankrupt, are as follows:

1. That said Imperial Copper Company was organized in May, 1903, by Messrs. F. M. Murphy, B. P. Cheney and associates, for the purpose of acquiring, owning and operating mines, mining properties, smelting plants, and for other purposes in connection therewith.

2. That some time in the year 1906, the said Imperial Copper Company caused to be organized the said Southern Arizona Smelting Company, and from the time of said organization and up to the present time, the officers and directors of said Smelting Company and said Copper Company have been and now are, practically the same persons; and from the time of the organization of said company and during all the times mentioned herein the said Copper Company owned and controlled all of the issued and outstanding shares of stock of said Smelting Company; and during all the times mentioned

herein absolutely directed and controlled the affairs of said Smelting Company.

3. That shortly after the organization of said Smelting Company, the said Copper Company, being then and there the owner of a large tract of land situate at said town of Sasco, Pinal County, Arizona, conveyed said land to said Smelting Company, and upon which said tract of land the said Copper Company thereafter caused to be erected a large smelting plant at a cost of approximately six hundred thousand dollars, all of which said money was furnished by the said Imperial Copper Company out of its own funds.

4. That the said Smelting Company was so organized by the said Imperial Copper Company as an auxiliary and subsidiary corporation, for the convenience of said Copper Company in transacting its said business of mining and [3] smelting, and for the purpose of smelting ores from the mines belonging to said Copper Company and other ores purchased by the said Imperial Copper Company, and the said Smelting Company was not an independent corporation or entity in the transaction of said business, but that during all of the times mentioned herein it was simply an adjunct, agent and instrumentality of the said Copper Company.

5. That the said Copper Company, during all of the times mentioned herein, and during all the times the said Smelting Company was so in operation, paid out of its own funds all of the salaries and wages of the employees of said Smelting Company and all of the accounts, bills and indebtedness for

materials and supplies used by said Smelting Company in the smelting of the ores from the mines belonging to said Copper Company and the ores so purchased by the said Copper Company.

6. That the said Smelting Company, during all of the times mentioned herein kept no bank account and had no funds of its own, and the business of said Copper Company and said Smelting Company was so interwoven and intermingled as to be inseparable.

7. That subsequent to the erection of said smelting plant the said Copper Company produced and mined from its said mine a large amount of ore, and caused the same to be smelted and treated at said smelting plant, and that said Copper Company also purchased certain small quantities of ore from other concerns and caused the same to be smelted and treated at said smelting plant, and that the said slag and the said flue dust above mentioned and described are and were the products of the ores so mined from the said Copper Company's mines and so purchased by the said Copper [4] Company, and that the said slag and the mineral contents and values of the said flue dust came out of the ores mined by the Copper Company from its said mines and from ores purchased by the said Copper Company and so smelted at said smelting plant.

8. That the said Copper Company did not sell its said ores so smelted by the said Smelting Company to the said Smelting Company, and the said Smelting Company did not purchase from the said Copper Company the said ores so smelted at said plant, and your petitioner is informed and believes and

therefore alleges that there existed between said Copper Company and said Smelting Company some manner or form of agreement by which the said Smelting Company was to be allowed a credit with the said Copper Company for the cost per ton of smelting said ore, but that said agreement did not provide that said slag and said flue dust should belong to or be the property of said Smelting Company.

9. That the said Smelting Company did not receive any of the proceeds of the bullion or products of any ores so smelted from the mines of said Copper Company or from the ores so purchased by said Copper Company, but that said Copper Company received all such proceeds and handled and disposed of the same.

10. That heretofore, on July 5th, 1911, a petition in bankruptcy was filed against said Imperial Copper Company, a corporation, and on July 25th, 1911, the said corporation was duly adjudicated a bankrupt. That thereafter, on August 12th, 1911, M. P. Freeman was elected trustee of said estate and duly qualified as such and acted as such trustee until July 2, 1914, at which time your petitioner was duly elected and qualified as such trustee, and is now and ever since has [5] been such trustee.

11. That claims have been filed against the said Imperial Copper Company, bankrupt, in excess of one million dollars, and your petitioner is informed and believes and upon such information and belief alleges that a large portion of the indebtedness represented by said claims was incurred by the said

Imperial Copper Company to obtain money with which to erect, equip and operate and maintain the said smelting plant, and also that a large portion of the claims filed in the matter of said Imperial Copper Company, bankrupt, by the creditors thereof represent indebtedness incurred by the said Imperial Copper Company for goods, wares and merchandise, supplies and materials used at the said smelting plant in the operation thereof.

12. That all of the assets of the said Smelting Company, including the said slag and the said flue dust were duly appraised as a part of the assets of the said Imperial Copper Company, Bankrupt, on the 20th day of September, 1911, by the appraisers duly appointed by the Court in said bankruptcy proceedings, and taken into account as a part of the assets of said Imperial Copper Company, bankrupt.

13. That on or about the 5th day of July, 1914, your petitioner, as Trustee of said Imperial Copper Company, bankrupt, took actual possession of said slag dump and flue dust, as part of the assets of said Imperial Copper Company, bankrupt, and was in the actual possession of the same at the time of the adjudication in bankruptcy of the said Southern Arizona Smelting Company, and of the appointment of Mr. M. P. Freeman, as trustee therein.

14. Your petitioner is informed and believes and upon such information and belief alleges that the estate of the [6] said Southern Arizona Smelting Company, bankrupt, has no right, title or interest in or to any of the said slag or said flue dust, and that the trustee in bankruptcy of the said Southern

Arizona Smelting Company has no right to the possession and control thereof, or any part thereof.

WHEREFORE, your petitioner prays as follows:

1. That the said property, to wit, the said slag and the said flue dust be stricken from the schedules filed herein by the Southern Arizona Smelting Company, bankrupt.

2. That the estate of the said Imperial Copper Company, bankrupt, be adjudged to be the owner and entitled to the possession of said slag and said flue dust and that your petitioner, as Trustee in Bankruptcy of said Imperial Copper Company, bankrupt, be adjudged to be entitled to the possession of said property.

3 That the Trustee in Bankruptcy of said Southern Arizona Smelting Company, to wit, Hon. M. P. Freeman, be directed to turn over said property, to wit, said slag and said flue dust, to your petitioner as Trustee in Bankruptcy of said Imperial Copper Company.

4. That the estate of said Southern Arizona Smelting Company, and the said M. P. Freeman, Trustee in Bankruptcy of said Southern Arizona Smelting Company, and each of them be adjudged to have no right, title or interest in or to any of said property or entitled to the possession thereof.

5. For other further and general relief as to the Court may seem meet and proper and for costs.

Answer under oath waived.

FRANCIS M. HARTMAN,
E. F. JONES,

Attorneys for Petitioner. [7]

State of Arizona,
County of Pima,—ss.

John H. Martin, being first duly sworn, deposes and says: That he is the Trustee in Bankruptcy of the Imperial Copper Company, a corporation, bankrupt, and the petitioner named in the foregoing petition. That he has read the foregoing petition and knows the contents thereof, and that the same is true in substance and in fact, of his own knowledge, except as to matters and things therein stated on information and belief, and as to such matters and things he believes it to be true.

JOHN H. MARTIN.

Subscribed and sworn to before me this 12th day of February, 1915.

My commission expires Feb. 19, 1916.

[Notary Seal] R. W. LANGWORTHY,
Notary Public, Pima County, Arizona.

[Endorsements]: B-9 (Tucson). E.-47 (Tucson).
In the United States District Court for the District of Arizona. In the Matter of the Southern Arizona Smelting Co., Bankrupt. Petition of John H. Martin, Trustee in Bankruptcy of the Imperial Copper Co., Bankrupt, Claiming Flue Dust and Slag Dump. Service of within accepted this 12th day of February, 1915. Selim M. Franklin, Attorney for M. P. Freeman, Trustee of Southern Arizona Smelting Co. Filed Feb. 12, 1915, 3 P. M. F. H. Bernard, Referee. [8]

*In the United States District Court for the District
of Arizona.*

In the Matter of SOUTHERN ARIZONA SMELT-
ING COMPANY, a Corporation,
Bankrupt.

**Answer of M. P. Freeman, Trustee of the Southern
Arizona Smelting Company, a Corporation,
Bankrupt, to the Petition of John H. Martin,
Trustee of the Imperial Copper Company,
Claiming Certain Property.**

Now comes M. P. Freeman, Trustee in Bankruptcy of the Southern Arizona Smelting Company, a corporation, bankrupt, and without waiving his objections to the jurisdiction of the referee, heretofore filed herein, does make this answer and reply to the petition of John H. Martin, Trustee of the Imperial Copper Company, a corporation, bankrupt, filed herein;

1. He denies that the estate of the Imperial Copper Company is the owner or entitled to the possession of the property mentioned and described in said petition, and described as follows, to wit: A certain flue dust dump, containing many thousand tons of flue dust and a certain slag dump, consisting of many thousand tons of slag; and he denies that the said flue dust dump is of the value of \$50,000, but avers that he is informed and believes it has but little value at the present time. And he further avers he does not know the value of the said slag dump.

2. In answer to the paragraph or section marked "1" of said petition, this respondent admits that the Imperial Copper Company was organized in

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May, 1903, but is without [9] knowledge as to whether the same was organized by Messrs. F. M. Murphy, B. P. Cheney and associates, and avers that the purpose of the organization is set forth in the articles of incorporation of said company, and will show the purposes for which said corporation was organized.

3. In answer to the paragraph or section marked "2" of said petition, this respondent admits that the Southern Arizona Smelting Company was organized as a corporation in the year 1906; but this respondent is without knowledge as to whether or not the said Imperial Copper Company caused the said Southern Arizona Smelting Company to be organized and this respondent is without knowledge as to whether or not, from the time of said organization of said Copper Company and up to the present time, the officers or directors of said Smelting Company and said Copper Company have been, or now are, practically the same persons; respondent denies that from the time of the organization of said Smelting Company, or during all or any of the times mentioned in said petition, the said Copper Company owned or controlled all of the issued and outstanding shares of said Smelting Company; and denies that during all the times mentioned in said petition said Copper Company absolutely directed or controlled the affairs of said Smelting Company; but in this behalf, respondent alleges that all of the said shares of stock except a few issued to qualify directors were pledged with the Bankers Trust Company,

a corporation, as security for certain bonded indebtedness.

4. In answer to the paragraph or section marked "3" of said petition, this respondent says that he is informed and believes that some time shortly after the organization of said Smelting Company, the said Imperial Copper Company did convey to said Smelting Company, a certain tract of land at the town of Sasco, Pinal County, Arizona, and that said Imperial [10] Copper Company caused to be erected a large smelting plant thereon, but this respondent is without knowledge as to the approximate cost thereof and he alleges that the said land was so conveyed and the said smelter was so erected under an agreement between the Copper Company and the Smelting Company, said agreement being reduced to writing and being dated on or about the 14th day of August, 1906, wherein and whereby the Copper Company agreed to make such conveyance and to erect such smelting plant in consideration of the issuance to it of 7,995 shares of the full paid-up stock of said Smelting Company as fully appears from the said agreement, aforesaid, a copy of which said agreement is hereto annexed and marked exhibit "A" and is made a part of this reply.

5. In answer to the paragraph or section marked "4" of said petition this respondent says that he is without knowledge as to whether said Smelting Company was so organized by the said Imperial Copper Company as an auxiliary and subsidiary corporation for the convenience of said Copper Company, as alleged in said paragraph; that he is in-

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formed and believes that one of the purposes of the organization of said Smelting Company was to smelt the ores from the mines belonging to said Copper Company; but he is further informed and believes and upon such information he denies that the said Smelting Company was not an independent corporation or entity and denies that during all or any of the times mentioned in said petition it was simply an adjunct or agent or instrumentality of said Copper Company; but he alleges that it was an independent corporation, and as more fully hereinafter set forth.

6. In answer to the paragraph or section marked "5" of said petition, this respondent alleges that he is informed and believes and upon such information and belief denies that the said Copper Company, during all of the times mentioned in [11] said petition, or during all of the times the said Smelting Company was so in operation, paid out of its own funds, all or any of the salaries or wages of the employees of said Smelting Company, or all or any of the accounts, bills or indebtedness for material or supplies used by said Smelting Company in the smelting of the ores from the mines belonging to said Copper Company, or the ores so purchased by the said Copper Company.

7. In answer to the paragraph or section marked "6" of said petition, this respondent denies that during all of the times mentioned in said petition said Smelting Company kept no bank account or had no funds of its own; and denies that the business of said Copper Company and said Smelting

Company was so interwoven or intermingled as to be inseparable; but this respondent is informed and believes and upon such information and belief alleges that the said Smelting Company did keep a bank account with the said Copper Company who acted as its banker in this regard, and that the business of said Smelting Company and its books and accounts were kept entirely separate and distinct from the business, books and accounts of said Copper Company, and that said Smelting Company kept separate books of account and that in no way was its affairs or its business interwoven with those of said Copper Company, so as to be inseparable, or at all.

8. In answer to the paragraph or section marked "7" respondent admits that subsequent to the erection of said smelting plant, there were smelted at the smelting plant of said Smelting Company, large quantities of ore which were produced from the mines of said Copper Company, but denies that said Copper Company purchased certain small quantities or any quantities of ore from other concerns and caused the same to be smelted or treated at said smelting plant; but in [12] this behalf, respondent avers that he is informed and believes, and upon such information and belief alleges that the said Smelting Company itself did smelt and treat for persons and corporations other than said Copper Company, quantities of ore at its said plant, aforesaid, during the time the said plant was in operation; and respondent denies that the slag and flue dust mentioned in said petition were the

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products of the ores mined from the Copper Company's mines and ores purchased by said Copper Company and so smelted at said smelting plant; and in this behalf, respondent alleges that he is informed and believes and upon such information and belief avers that the said slag dump and the said flue dust are the results or residue from the smelting of all the ores which were smelted by said Smelting Company at its said smelting plant, being the residue or result from ores which were smelted by the said Copper Company, as well as from ores of other persons and companies.

9. In answer to the paragraph or section marked "8" of said petition, this respondent avers that he is without knowledge as to whether the said Copper Company did or did not sell its said ores so smelted by the Smelting Company to the said Smelting Company, or as to whether or not the said Smelting Company did or did not purchase from the said Copper Company the said ores so smelted at said plant; but he alleges that he is informed and believes that the contract, a copy of which is hereto annexed and marked Exhibit "A," fully sets forth the terms and conditions upon which the said Smelting Company did smelt the ores for the said Copper Company; and upon such information and belief, this respondent further denies that there was any manner or form of agreement, as alleged in said paragraph 8 of said petition, other than the said agreement marked Exhibit "A," and annexed hereto, and he further avers that he is informed and believes that under and

by virtue of said agreement, the said [13] slag dump and flue dust did belong to and was the property of the said Smelting Company.

10. In answer to the paragraph or section marked "9" respondent alleges that he is informed and believes and upon such information and belief denies that the said Smelting Company did not receive any of the proceeds of the bullion or products of any ores so smelted from the mines of said Copper Company, or from the ores alleged to have been purchased by said Copper Company, and denies that said Copper Company received all or any of such proceeds or handled or disposed of the same; and this respondent further alleges that he is informed and believes that on or about the 16th day of December, 1907, a certain contract in writing was entered into between said Smelting Company and the American Metal Company, Limited, and the said Copper Company, which fully shows and sets forth the way and manner in which all the proceeds of the bullion or products of the ores smelted by the said Smelting Company, were received and handled and disposed of, a copy of which said agreement is hereto annexed marked Exhibit "B" and is made a part hereof.

11. In answer to the paragraph or section marked "11" of said petition, this respondent admits that claims have been filed against the Imperial Copper Company, bankrupt, in excess of \$1,000,000, but he is without knowledge as to whether or not any of said claims, or indebtedness represented by said claims, was incurred by the said Imperial Copper

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Company to obtain money with which to erect, equip, operate and maintain said smelting plant, or for what purpose a large or any part of said indebtedness was incurred by the said Imperial Copper Company; but he further alleges that he is informed and believes and upon such information and belief alleges that all, or nearly all, or the greatest part of the moneys expended [14] by said Imperial Copper Company in erecting and equipping said smelting plant was raised by the sale of its bonds, which bonds were secured, amongst other things, by the pledge of the said shares of stock of the Smelting Company, issued by the Smelting Company to the Copper Company, as a consideration for the said land conveyed, and the said plant so erected, and as hereinafter more fully set forth.

And in further answer to said paragraph or section marked "11," this respondent is informed and believes, and upon such information and belief he denies that a large portion of the claims, or any of the claims, filed in the matter of said Imperial Copper Company by the creditors thereof, represent indebtedness incurred by the said Imperial Copper Company for goods, wares and merchandise, supplies and materials used by the said smelting plant in the operation thereof; on the contrary, upon such information and belief, this respondent alleges that all of the goods, wares and merchandise, supplies and materials for which said claims were filed in the matter of said Imperial Copper Company, were for goods, wares and merchandise, sup-

plies and material which were not used at said smelting plant at all, or in the operation thereof, but were supplied by the said Imperial Copper Company for the use of its mines and mining operations only, and its boarding-house and merchandise store.

12. In answer to the paragraph or section marked "12" of said petition, this respondent denies that all of the assets of said Smelting Company, including the said slag and flue dust, were duly appraised as a part of the assets of the said Imperial Copper Company, bankrupt, as alleged in said petition, and denies that the same were taken into account as a part of the assets of the said Imperial Copper Company, bankrupt, and this respondent further avers that the said Smelting Company, as he is informed and [15] believes was never advised of the said alleged appraisement and never consented thereto, and is in no ways bound thereby, and further avers that the said Smelting Company has been in the peaceable and adverse possession of the said flue dust and slag dump, claiming the same to be its own property, for a period of more than four years continuously, immediately prior to its adjudication as a bankrupt, and the appointment of this respondent as its trustee in bankruptcy, and that any claim or cause of action of the said Imperial Copper Company, or of the said John H. Martin, Trustee in Bankruptcy of said Imperial Copper Company, is barred by the provisions of the statutes of limitations of the States of Arizona, and particularly by the provisions of sections 710, 711, 713 and 716 of the Re-

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vised Statutes of the State of Arizona of the year 1913.

13. In answer to the paragraph or section marked "13" of said petition, respondent denies that on or about the 5th day of July, 1914, or ever or at all, the said petitioner, as trustee, or otherwise, took actual possession of said slag dump or flue dust, as part of the assets of said Imperial Copper Company, bankrupt, or at all; and denies that he was in the actual possession of the same at the time of the adjudication in bankruptcy of said Southern Arizona Smelting Company, or at the time of the appointment of this respondent as trustee herein; and this respondent further avers that he is informed and believes, and upon such information and belief alleges, that the said Southern Arizona Smelting Company had been in the adverse and peaceable possession of the said slag dump and the said flue dust, claiming to be the owner thereof, and exercising publicly dominion and control thereof, for more than four years continuously, prior to the said 5th day of July, 1914, and that any claim or cause of action on the part of the said Imperial Copper Company, or on the part of the said John H. Martin, as Trustee [16] of said Imperial Copper Company, bankrupt, is barred by the statute of limitations of the State of Arizona, and particularly by the provision of the statutes of limitations of the said State of Arizona hereinbefore specifically enumerated.

14. In answer to the paragraph or section marked "14" of said petition, this respondent de-

nies that the said Southern Arizona Smelting Company, bankrupt, has no right or title or interest in or to the said slag or said flue dust and denies that the said trustee in bankruptcy of the said Southern Arizona Smelting Company has no right to the possession or control thereof, or any part thereof; on the contrary, this respondent avers that the said Southern Arizona Smelting Company, and this respondent, as its Trustee in Bankruptcy, are the owners and entitled to the possession and control of the slag and said flue dust.

WHEREFORE, your respondent prays that the said petitioner have and take nothing herein, and be allowed no relief; that the estate of the Southern Arizona Smelting Company, bankrupt, be adjudged to be the owner and entitled to the possession of said slag and flue dust and that this respondent, as Trustee in Bankruptcy of said Southern Arizona Smelting Company, be adjudged to be entitled to the possession thereof, as part of the assets of the said Southern Arizona Smelting Company, bankrupt, and that the said Imperial Copper Company and the said John H. Martin, as Trustee for the said Imperial Copper Company, be adjudged to have no right, title or interest in or to any of said property, or to be entitled to the possession thereof; and for such other and further relief as to the Court may seem meet and proper and for costs.

ELLINWOOD & ROSS, and

SELIM M. FRANKLIN,

Attorneys for M. P. Freeman, Trustee, Respondent. [17]

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State of Arizona,
County of Pima,—ss.

M. P. Freeman, being first duly sworn, deposes and says: That he is the Trustee in Bankruptcy of the Southern Arizona Smelting Company, a corporation, bankrupt, and the respondent named in the foregoing answer; that he has read the foregoing answer and knows the contents thereof, and that the same is true in substance and in fact of his own knowledge, except as to matters and things therein stated on information and belief and as to such matters and things he believes it to be true. And that the facts denied therein are not true to the best of his knowledge and belief.

M. P. FREEMAN.

Subscribed and sworn to before me this 5th day of April, 1915.

[Notary Seal]

W. FRED KAIN,
Notary Public. [18]

My commission expires Nov. 20, 1916.

Exhibit "A"—Agreement, August 14, 1906, Between Imperial Copper Co. and Southern Arizona Smelting Co.

THIS AGREEMENT, made this 14th day of August, 1906, by THE IMPERIAL COPPER COMPANY, a corporation, of Arizona, hereinafter called "Copper Company," party of the first part, and SOUTHERN ARIZONA SMELTING COMPANY, a corporation of Arizona, hereinafter called "Smelting Company," party of the second part, WITNESSETH, that

WHEREAS, said "Smelting Company" is a cor-

poration organized under the laws of the Territory of Arizona, for the purpose of carrying on a general Smelting and reducing business and purposes incidental thereto and has an authorized capital stock of \$1,500,000 divided into shares of \$100 each; and

WHEREAS, the Imperial "Copper Company" is a producer of ores carrying copper and other valuable metals, and has acquired a valuable smelter site and townsite in Pinal County, Arizona; and

WHEREAS, the Smelting Company desires to acquire said smelter site and have erected thereon a smelter plant of a capacity of approximately 30 tons, and especially desires to obtain a contract for the ores of the "Copper Company," in order to have a basis on which to operate the smelter for outside customers' ores;

NOW, THEREFORE, in consideration of the premises and in consideration of One Dollar in hand paid by each of the parties hereto to the other, and in consideration of the covenants and agreements hereinafter made to be kept and performed by the parties hereto respectively, it is agreed by the parties hereto as follows, to wit:

The "Copper Company" having acquired six hundred and forty acres of land for a smelter site and town site, situated in Santa Cruz Valley at a point on the line of the Arizona Southern Railroad Company suitable for the erection of the smelter plant hereinafter described, agrees to erect thereon a smelter plant, together with all machinery and appliances necessary and convenient for the smelting and reduction of ores carrying values in copper and other metals, such plant, when completed, to have a

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capacity of approximately 300 tons daily, and to be complete in all particulars, and erection and construction of such plant and all appurtenances and appliances thereto to be carried on under the supervision of the "Smelting Company's" General Manager or Engineer, or both, and the work to be conducted in a manner satisfactory to "Smelting Company's" Engineer or Manager; and upon completion of such plant, "Copper Company" agrees to sell, convey and transfer by deeds, bills of sale and other instruments of conveyances and transfer, all of said tract of six hundred and forty acres, constituting the smelter site and town site together with all buildings, plant and machinery upon said land and constituting said smelter plant; and agrees to furnish the "Smelting Company" with all ores of every kind produced from the Mines of the "Copper Company" (whether such mines are now owned or hereafter acquired by the "Copper Company") that may be desired by the "Smelting Company" to be smelted and reduced by the "Smelting Company." The term of such contract to be a period of six months from and after the date of the beginning of operations of said smelter.

The smelting, reduction and marketing of such ores so delivered [19] by the "Copper Company" to be done by the "Smelting Company" at the actual cost thereof plus five per cent interest on the cost of the property and plant to the "Smelting Company" to wit, \$800,000.00.

IN CONSIDERATION of which the "Smelting Company" agrees to issue to the "Copper Company" or as it may direct, Seven Thousand Nine

hundred ninety-five (7,995) shares of the stock of the "Smelting Company," par value \$100 each, same to be fully paid, in payment for the real estate and plant so to be conveyed and transferred, and the contract for the furnishing of the ore by the "Copper Company" to form the basis for the "Smelting Company's" operations in custom ores.

And the "Smelting Company" further agrees to take and reduce the ores so to be furnished by the "Copper Company" upon the terms and at the prices for smelting hereinbefore set forth.

IT IS FURTHER AGREED by the parties that from time to time, as work on the plant and property progress, the "Smelting Company" will issue to the "Copper Company" at the option of the "Copper Company," shares of the capital stock, full paid and non-assessible, in payment for the property, plant and contract, as follows:

When work of construction one quarter completed, three thousand five hundred (3,500) shares.

When work of construction one half completed, one thousand five hundred (1,500) shares, additional.

When work of construction three quarters completed, one thousand five hundred (1,500) shares additional.

When work of construction completed, one thousand four hundred ninety five (1,495) shares additional.

and the certificate of the Engineer of the "Copper Company" that the work has arrived at any of the above stages shall be sufficient to entitle the "Copper

Company'' to receive certificates for the shares of stock, as above set forth.

IN WITNESS WHEREOF, the Party of the First Part has caused its corporate name to be hereunto affixed by its President, duly attested by its Secretary, and its corporate seal to be hereto attached, the day and year above written, all by authority of a resolution passed by its Board of Directors the 14th day of August, 1906.

And Party of the Second Part has caused its corporate name to be hereto affixed by its President, duly attested by its Secretary, and its corporate seal to be hereto attached the day and year above written, all by authority of a resolution passed by its Board of Directors the 14th day of August, 1906.

THE IMPERIAL COPPER COMPANY.

By E. B. GAGE,
President.

Attest: A. N. GAGE,
Secretary.

SOUTHERN ARIZONA SMELTING
COMPANY.

By BENN GOODRICH,
President.

Attest: A. N. GAGE,
Secretary.

Executed in presence of:

.....
.....
As to Imperial Copper Company.
.....
.....

As to Southern Arizona Smelting Company. [20]

**Exhibit "B"—Agreement, December 16, 1907,
Between Southern Arizona Smelting Co. and
American Metal Co., Ltd., and Imperial Copper
Co.**

AGREEMENT made this sixteenth day of December, 1907, by and between the SOUTHERN ARIZONA SMELTING COMPANY, a corporation organized and existing under the laws of the Territory of Arizona, party of the first part; THE AMERICAN METAL COMPANY, LIMITED, a corporation organized and existing under the laws of the State of New York, party of the second part, and THE IMPERIAL COPPER COMPANY, a corporation, organized and existing under the laws of the Territory of Arizona, party of the third part.

WITNESSETH:

That for and in consideration of the sum of One Dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby respectively acknowledged, and in consideration of the covenants and agreements hereinafter contained, it is agreed by and between the parties to these presents as follows:

I. The party of the first part agrees to sell and hereby does sell at the price and upon the terms hereinafter set forth to the party of the second part, the entire output of copper now or at any time during the existence of this agreement smelted, owned or controlled by it, which it guarantees shall not be less than One Million two hundred and fifty (1,250,000) thousand pounds to One Million five

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hundred thousand (1,500,000) pounds monthly, subject to conditions hereinafter set forth, for a period of three (3) years, beginning with the first shipment expected to be made in January, 1908, and terminating three (3) years thereafter.

While it is agreed that this contract shall cover the entire output of the party of the first part, it is understood that whenever such output shall exceed One Million five hundred thousand (1,500,000) pounds monthly, two (2) months written notice of such increase, specifying approximately the amount thereof, shall be given, and the party of the second part shall have ten (10) days from the receipt of such notice in which to decide whether or not it shall accept the increase.

If at any time such entire output shall fall below One Million two hundred and fifty thousand (1,250,000) pounds of fine copper monthly for any reason whatsoever, not the fault of the party of the first part, such deficiency shall be shipped after what would otherwise be the expiration of this contract in monthly quantities approximately equal to previous monthly shipments; and when so shipped the terms of this contract shall be considered as having been complied with in so far as the same relate to the guarantee of the quantity of monthly shipments.

II. The copper shall be delivered by the party of the first part to the party of the second part at New York, lighterage free, or at the option of the producers at Nichols Siding, Long Island Railroad, provided no additional expense thereby be occasioned the party of the second part.

Said deliveries to be made in the form of blister copper in plates, measuring about seventeen (17) inches by about twenty-four (24) inches and not more than two and one-half ($2\frac{1}{2}$) inches thick, and assaying about Ninety Eight and one-half ($98\frac{1}{2}$) [21] per cent, or more in copper; up to two hundred (200) ounces in silver and up to five (5) ounces in gold per ton of two thousand (2000) pounds; and to be free from impurities that interfere with the making of prime electrolytic copper.

III. The party of the second part agrees, at the request of the party of the first part, to advance and pay the freight charges upon the said deliveries of copper when the same shall become due in New York, and upon receipt of consignments to use due diligence in causing the same to be weighed, sampled and assayed as hereinafter provided; and to account to the party of the first part at its office in New York on the due dates as hereinafter defined for the copper, gold and silver contents of said consignments, less all advances, if any, with interest thereon; also less refining charges as hereinafter specified; it being mutually agreed that in no case shall the weighing and sampling be finished later than ten (10) days after arrival of consignments at Nichols Siding, or New York, lighterage free. The party of the first part shall give the party of the second part prompt written notice of each shipment.

The party of the first part shall have the privilege of drawing at sight upon the party of the second part for ninety (90) per cent of the approximate value of such blister copper, less freight and interest

and refining charges as above set forth, as shown by bill-of-lading, satisfactory assay certificates (the assay certificates will be satisfactory if approved by the General Manager or Local Superintendent of the party of the first part), smelter and railroad scale weights attached to the draft, in which event the party of the first part shall allow the party of the second part interest at the rate of six (6) per cent, per annum on such advances from the day the drafts are paid until dates when payments would otherwise be due.

It is understood that in case of a decline in the price of copper during the time the blister copper is in transit and until such time as payment for the copper contained therein becomes due, the party of the first part is to make good to the party of the second part any difference thus arising, so that a margin of ten (10) per cent of the value of the consignment is at all times maintained between the value of such consignment and the amount of the draft drawn by the party of the first part.

Whenever an advance has been made by the party of the second part upon any shipment of copper by means of a draft drawn by the party of the first part, as above provided, and any of such copper be lost or for any cause whatever not delivered to the party of the second part within a reasonable time, in no event to exceed sixty days after such advance, the party of the first part shall promptly repay the party of the second part the amount of such draft with interest.

IV. It is mutually agreed that each delivery of

blister copper shall be weighed and sampled upon arrival at the refining works by the parties of the first and second parts hereto jointly, and by methods mutually agreed upon by them, each such party paying its own representative.

Three (3) pulp samples shall be taken of the samples secured and one assayed by each of the parties of the first and second part, and the average of the two shall be final. Provided, however, that if the discrepancies between the two shall be [22] greater than two tenths (.2) per cent, as to copper or one (1) ounce as to silver, or three hundredths (.03) ounce as to gold per ton of two thousand (2000) pounds then in each such case the third sample shall be delivered to Lucius Pitkin as referee for assay, or to such other referee as may be equally satisfactory to both parties, and the average between his assay and that of the two which is nearest to his shall be accepted by both parties as the correct assay; and all expenses of such reference shall be borne by the party whose assay proves farthest from that of the referee's.

The methods to be pursued in determining the copper, silver and gold contents of such deliveries of blister copper shall be those which, after investigation by the chemists of each of the parties of the first and second part shall prove to the satisfaction of all such chemists to give results nearest to the actual amounts of copper, gold and silver contained in the material received.

V. The party of the second part agrees to purchase and hereby does purchase the said material

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from the party of the first part upon the terms herein set forth, and agrees to pay to the party of the first part for the same in the manner following:

For all gold at the rate of twenty dollars (\$20) per ounce, provided contents are five hundredths (.05) ounce per two thousand (2000) pounds, or above; if contents are below five hundredths (.05) ounce per two thousand (2000) pounds, no payment to be made therefor.

For the silver contents in said material if the same amount to one hundred (100) ounces per two thousand (2000) pounds, or less, for all such silver; if said material contains above one hundred (100) ounces per two thousand (2000) pounds, then for ninety nine (99) per cent of the silver so contained in said material at the average quotation for fine silver as published by the Engineering and Mining Journal of the City of New York for the week during which the material is sampled at the refiners.

For the copper contained in said material on the basis of electrolytic assay, at the average price of electrolytic copper in cakes, wire bars or ingots, as quoted daily in the Engineering and Mining Journal of New York for the week during which the material is sampled at the refiners; If two quotations are given by said Engineering and Mining Journal, the mean of the two to be taken as a basis for payment.

The term "week" to be understood as the six days quoted in the Engineering and Mining Journal and running from Thursday to Wednesday.

The party of the second part shall deduct and be

entitled to retain from the moneys that may be payable to the party of the first part pursuant to the terms of this contract for the cost of refining such material Fifteen Dollars (\$15.) per two thousand (2000) pounds of copper find.

The due dates upon which the party of the second part agrees to account and pay for the material to be as follows: [23]

a. For the gold and silver ninety (90) days from date of arrival of the consignment at Nichols Dock or Siding, or lighterage free New York.

b. For the copper sixty (60) days from date of arrival of the consignment at Nichols Dock or Siding, or lighterage free New York.

VI. It is understood and agreed that any and all notices required or permitted to be given to either party under the terms of this contract shall be deemed sufficient if made in writing and delivered at their office in the City of New York.

VII. It is mutually understood and agreed that neither of the parties of the first and second part shall be liable for unavoidable delays in the performance thereof, or for damages as a result of such non-performance which shall be occasioned by war, labor strikes, fire or accidents arising in their respective works or mines, or on transportation lines or from other causes over which they have no control.

VIII. Whenever for a continuous period of at least thirty (30) days the price of electrolytic cop-

per in cakes, wire bars, or in ingots, as quoted in the Engineering and Mining Journal of New York, shall be below ten cents (10¢) per pound, the party of the first part shall have the option to suspend shipments under this agreement, so long as the price of such copper shall continue to remain below ten cents (10¢) per pound, provided it gives the party of the second part written notice of its intention so to do, and in that event the period of three (3) years called for by this agreement shall be extended as much longer as such shipments be so suspended.

IX. If the party of the first part shall be prevented by war, labor strike, fire, accident or other causes beyond its control from producing any copper during any month, it shall be absolved from making any shipments during such months; but in that event it shall be obligated to resume shipments as soon thereafter as such obstacles have been overcome until the entire quantity called for by this contract shall have been shipped to the party of the second part.

And whenever the party of the second part shall be prevented by war, labor strike, fire, accident or other cause beyond its control from having said copper refined, it shall be absolved from accepting any shipments during the time that such obstacle exists, provided that during such time the party of the second part shall at its own expense furnish a suitable and safe place for the storage of shipments of the party of the first part under this agreement; but in the event that any such obstacle shall continue to exist for a period longer than sixty (60) days,

the party of the first part shall have the privilege of suspending this agreement until the party of the second part shall be able to resume the refining of copper; and in that event, the party of the first part shall, at its option, have the right to make other disposition of its copper until refining can be resumed; and the party of the second part agrees to make all reasonable efforts to resume the refining of the copper under this agreement as quickly as possible, by means of [24] the refinery then used or some other refinery; and if any other refinery be used for that purpose, the copper shall be shipped to the most convenient spot for delivery at such refinery and any additional expense in the matter of freight or forwarding charges in excess of such freight and forwarding charges to the points above designated shall be borne by the party of the second part.

It is further agreed that if the party of the first part shall be prevented for any of the causes above specified in this article beyond its control from producing any copper for a continuous period of one hundred and twenty (120) days; or if the party of the second part shall be prevented for any of the causes above provided in this article beyond its control from having any shipment of copper to it refined as in this agreement provided, for a continuous period of one hundred and twenty (120) days, then in either of such events the other of said parties of the first or second part, as the case may be, shall have the privilege to terminate this agreement upon giving the party so prevented, ten (10) days' written notice of intention so to do, whereupon this

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agreement shall at the end of said ten (10) days terminate and be of no further force and effect;—except that all outstanding unsettled and unadjusted matters between the parties of the first and second part under this agreement shall thereupon be promptly settled, adjusted, liquidated and paid.

X. In the event that at any time any question of difference shall arise between the parties of the first and second part hereto growing out of the interpretation of or operation under this contract, such questions shall be disposed of by arbitration.

To that end each of the parties of the first and second part shall within ten (10) days from the time either party declares its intention to arbitrate, appoint an arbitrator who shall hear the evidence and proofs submitted by each of the parties to the controversy, in the City of New York, and such arbitrators shall dispose of such questions within ten (10) days of their appointment and their decision shall be final. In case, however, that the said arbitrators shall be unable to agree, they shall within five (5) days of their inability to agree, appoint an umpire who shall consider the proofs already taken and hear such further proofs or statements as he may desire and in that event his decision as to the questions in controversy shall be final and conclusive and binding upon the parties to this agreement.

XI. And the party of the third part hereto representing that it owns practically all of the stock of the said party of the first part hereto, and owns or controls some of the mines from which the party of the first part is to acquire ore covered by this

agreement, and as a further inducement for the party of the second part to enter into this agreement, the party of the third part hereby guarantees to the said party of the second part the prompt and faithful performance by the said party of the first part hereto of all the terms and provisions of this agreement on the part of said party of the first part to be done or performed, and the party of the third part hereto waives notice of each and every default under this agreement on the part of the party of the first part. [25]

XII. It is expressly understood and agreed that the party of the second part may from time to time, as it sees fit, make any advance or loan of money to the Development Company of America or the party of the third part, upon any terms it thinks proper, and that any advance or loan already or hereafter made by the party of the second part to The Development Company of America, or to the party of the third part shall not in any way effect this agreement.

XIII. Finally it is mutually agreed that the covenants herein contained shall inure to the benefit of and bind the successors and assigns of the respective parties.

IN WITNESS WHEREOF the parties hereto have caused these presents to be signed and executed in triplicate by their respective corporate officers and their respective corporate seals to be hereunto affixed by order of their respective Boards of Direc-

tors the day and year first above written.

SOUTHERN ARIZONA SMELTING COM-
PANY.

By (Signed) E. B. GAGE,
President.

By (Signed) A. N. GAGE,
Secretary.

WITNESS: (Sgd)

(Seal) W. F. STAUNTON.

THE AMERICAN METAL COMPANY,
“LIMITED.”

By (Signed) J. LANGELOTH,
Pres.

Attest: (Seal)

(Sgd.) JULIUS GOLDMAN.

THE IMPERIAL COPPER COMPANY.

By (Signed) E. B. GAGE,
President.

By (Signed) A. N. GAGE,
Secretary.

(Sgd.)

(Seal) W. F. STAUNTON.

[Endorsements]: No. ——. In the U. S. District Court, District of Arizona. In the Matter of Southern Arizona Smelting Company, a Corporation, Bankrupt. Answer of M. P. Freeman, Trustee Southern Arizona Smelting Co., to Petition of John H. Martin, Trustee, Imperial Copper Co. Filed this 5th day of April, 1915, at 11 o'clock A. M. F. H. Bernard, Referee in Bankruptcy. Service admitted this 5th day of April, 1915. Francis M. Hartman, Attorney for John H. Martin, Trustee. Ellinwood

& Ross and Selim M. Franklin, Attorneys for M. P. Freeman. [26]

*In the United States District Court for the District
of Arizona.*

In the Matter of the SOUTHERN ARIZONA
SMELTING COMPANY, a Corporation,
Bankrupt.

Stipulation Re Institution of Cause of Action, etc.

IN RE FLUE DUST AND SLAG DUMP.

IT IS HEREBY STIPULATED and agreed by and between the parties hereto, by their respective counsel, to wit, John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a corporation, bankrupt, and M. P. Freeman, Trustee in Bankruptcy of the Southern Arizona Smelting Company, a corporation, bankrupt, that that certain proceeding heretofore instituted herein by the said John H. Martin, as Trustee of said Imperial Copper Company, a corporation, bankrupt, and now pending herein, wherein and whereby the said John H. Martin, as Trustee of said Imperial Copper Company, a corporation, is claiming the ownership, title and right of possession of a certain lot of flue dust and a certain lot of slag, situate at the smelting plant of the said Southern Arizona Smelting Company, at the town of Sasco, Pinal County, Arizona, be considered, treated and proceeded with as a plenary action in all respects, as though said action had been originally instituted by the said John H. Martin, Trustee in Bankruptcy of the said Imperial Copper Company, a

corporation, bankrupt, against said M. P. Freeman, Trustee in Bankruptcy of said Southern Arizona Smelting Company, a corporation, bankrupt, as a plenary suit in equity in the United States District Court for the District of Arizona, at Tucson:

IT IS FURTHER STIPULATED by and between the respective parties, by their respective counsel, that the said action and [27] proceeding be docketed in this court as a plenary suit in equity, entitled John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a Corporation, Bankrupt, vs. M. P. Freeman, Trustee in Bankruptcy of Southern Arizona Smelting Company, a Corporation, Defendant; and

The foregoing stipulation having been made in open court between the parties hereto on the 21st day of February, 1916, it is further stipulated that this stipulation be entered upon the minutes of the above-entitled court, *nunc pro tunc* as of the said 21st day of February, 1916; and

Said parties, by their respective attorneys, do hereby agree and consent that the above-entitled court now make and enter an order *nunc pro tunc*, as of February 21, 1916, that the said action and proceedings so instituted by the said John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a corporation, bankrupt, to recover the ownership, title and possession of said flue dust and slag from the estate of the Southern Arizona Smelting Company, a corporation, bankrupt, and from the said M. P. Freeman, trustee thereof, be treated, considered and proceeded with as a plenary action, as

above set forth, and that the said action be so docketed as above mentioned.

Dated this 9th day of June, A. D. 1916.

FRANCIS M. HARTMAN,
EDWIN F. JONES,

Attorneys for John H. Martin, Trustee in Bankruptcy of Imperial Copper Company, a Corporation, Bankrupt.

SELIM M. FRANKLIN,
Attorney for M. P. Freeman, Trustee in Bankruptcy of Southern Arizona Smelting Company, a Corporation, Bankrupt.

[Endorsements]: No. E-47. In the United States District Court for the District of Arizona. In the Matter of the Southern Arizona Smelting Company, a Corporation, Bankrupt. Stipulation. Filed June 14th, A. D. 1916. Mose Drachman, Clerk. [28]

In the United States District Court for the District of Arizona.

In the Matter of the SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.

Order Nunc Pro Tunc Re Suit in Equity, etc.

It appearing to the Court that heretofore, on February 21, 1916, a stipulation was made and entered into in open court, by and between the parties herein, to wit, John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a corporation, bankrupt, and M. P. Freeman, Trustee in Bankruptcy of Southern Arizona Smelting Company, a corporation,

bankrupt, by their respective attorneys, that the action and proceeding instituted herein by John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a corporation, bankrupt, to recover the ownership and possession of certain property in the possession of said M. P. Freeman, Trustee in Bankruptcy of the Southern Arizona Smelting Company, a corporation, bankrupt, to wit, a certain lot of flue dust and a certain lot of slag, situate at the smelting plant of the Southern Arizona Smelting Company, at the town of Sasco, Pinal County, Arizona, be considered, treated and proceeded with as a plenary action.

And it also appearing to the Court that an order was made by this Court on said date, to wit, February 21, 1916, in pursuance of said stipulation, that said action be treated, considered [29] and proceeded with as plenary suit in equity; and

It also further appearing that said order was not formally entered upon the minutes of the court; and

It also appearing to the Court that a written stipulation by and between the parties to said action has been filed herein stipulating and agreeing that said action and proceeding be treated, considered and proceeded with as a plenary suit, and be docketed in this court entitled John H. Martin, Trustee in Bankruptcy of The Imperial Copper Company, a Corporation, Bankrupt, Plaintiff, vs. M. P. Freeman, Trustee in Bankruptcy of the Southern Arizona Smelting Company, a Corporation, Bankrupt, Defendant:

It is therefore ordered that the action and proceeding so instituted by the said John H. Martin, Trustee

in Bankruptcy of the Imperial Copper Company, a Corporation, Bankrupt, against M. P. Freeman, Trustee in Bankruptcy of the Southern Arizona Smelting Company, a Corporation, Bankrupt, be and the same is hereby treated, considered and to be proceeded with as a plenary action and that the same be docketed in this court entitled, John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a Corporation, Bankrupt, Plaintiff, vs. M. P. Freeman, Trustee in Bankruptcy of the Southern Arizona Smelting Company, a Corporation, Bankrupt, Defendant, in Equity.

And that this order be made and entered as of February 21, A. D. 1916.

Done in open court this 14th day of June, A. D. 1916.

WM. H. SAWTELLE,
Judge.

We hereby agree and consent to the above order.

FRANCIS M. HARTMAN,
EDWIN F. JONES,

Attorneys for John H. Martin, Trustee.

[Endorsements]: No. ——. In the United States District Court for the District of Arizona. In the Matter of the Southern Arizona Smelting Company, a Corporation, Bankrupt. Order *Nunc Pro Tunc*. Filed June 14th, 1916. Mose Drachman, Clerk.
[30]

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*In the United States District Court for the District
of Arizona.*

IN EQUITY—No. E-47 (TUCSON).

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.

JOHN H. MARTIN, Trustee in Bankruptcy of
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Plaintiff,

vs.

M. P. FREEMAN, Trustee in Bankruptcy of
SOUTHERN ARIZONA SMELTING COMPANY, a Corporation,

Defendant.

Findings of Fact.

IN RE FLUE DUST AND SLAG DUMP.

The petition of John H. Martin, Trustee of the Imperial Copper Company, a corporation, bankrupt, that he be declared the owner of certain flue dust and slag dump, which is claimed by the Trustee in Bankruptcy of the Southern Arizona Smelting Company, as part of the assets of the bankrupt estate of said Smelting Company, came on to be heard the 21st day of February, 1916, Francis M. Hartman, Esq., and E. F. Jones, Esq., appearing as attorneys for John H. Martin, Trustee, and Selim M. Franklin, Esq., appearing as attorney for M. P. Freeman, Trustee; the evidence heretofore taken before the Referee having been submitted to the Court as the evidence in the case, and the parties having agreed in open court to the following Findings of Fact therefrom, the Court

does hereby adopt the same as the Findings of Fact of the Court, as follows, to wit:

FINDINGS OF FACT.

1. That the Imperial Copper Company was organized in May, 1903, by Messrs. F. M. Murphy, B. P. Cheney, and associates, for the purpose of acquiring, owning and operating mines, mining properties and smelting plants, and for other purposes in connection therewith, and that Ben Goodrich, A. N. Gage, Henry Kinsley, E. W. Walker and John L. Miller were the incorporators, and constituted the first board of directors of said company; that Ben Goodrich was president, Henry Kinsley was vice-president and A. N. Gage was [31] secretary and treasurer, were the first officers of the corporation.

The Articles of Incorporation of the Imperial Copper Company amongst other things provide:

“The general nature of the business proposed to be transacted by the corporation is as follows, to wit:

“To locate, buy, lease, hold, sell, improve, develop and operate mines and mining properties and to pledge, mortgage or otherwise deal in the same, or any leases, options or bonds thereon.

“To quarry, smelt, refine, dress, amalgamate and prepare for market and to market ores, metals and mineral substances of all kinds and to carry on any other operation which may seem conducive to any of the company’s objects to buy, sell, manufacture and deal in minerals, plants, machinery, implements, conveniences, provisions and things capable of being used in connection

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with mining operations or required by workmen and others employed by the corporation, to buy, construct, lease, sell, convey, maintain, improve, manage, work, control and superintend any roads, bridges, ways, reservoirs, watercourses, wharves, tramways or railroads, in so far as it may be lawful so to do, to buy, construct, lease, sell, convey, maintain, improve, manage, control and superintend furnaces, smelters, concentrators, mills, crushing works, hydraulic works, factories, warehouses and other conveniences which may seem directly or indirectly conducive to any of the objects of the corporation, and to contribute to, subsidize or otherwise aid or take part in any such operations.”

2. That on or about the 11th day of May, 1904, the Imperial Copper Company duly authorized the issuance and sale of 2,000,000 of first mortgage bonds, and on said day, under proper corporate authority it did execute to the Bankers Trust Company, a corporation, doing business in the State of New York, a deed of trust, conveying to it all of the real and personal property which it then owned, or might thereafter acquire, as security for the said bonds, so authorized to be issued, which deed of trust was duly executed and recorded on June 24, 1904, in the office of the County Recorder of Pima County.

3. That on the 6th day of August, 1906, Ben Goodrich, A. N. Gage, Henry Kinsley, J. L. Miller and W. F. Walsh, duly organized under the laws of the Territory of Arizona, the “Southern Arizona Smelting Company,” a corporation, bankrupt herein,

with an authorized capital stock of 1,500,000 shares. The general nature of the business proposed to be transacted by said corporation was to quarry, mine, dig, buy and otherwise acquire and deal in, sell and otherwise dispose of ores, minerals, metals and their products direct and incidental, [32] and to dress, mill, reduce, smelt, prepare, refine and otherwise treat ores, minerals, metals and their products, and to construct plants, buildings, machinery and appliances for the carrying on of any of said business; and to locate, buy or otherwise acquire farming lands, desert lands, and to locate and to acquire and develop towns, townsites, water rights, and also to construct, operate and sell works for the producing and furnishing of power, water, gas or electricity; and to operate tramways, street railroads and other methods of conveyance; to carry on merchandise business; and to hold, purchase, buy and sell, mortgage and pledge, and otherwise deal in the bonds, mortgages, notes, debentures, shares of capital stock and other securities of any private corporation, and to do other certain business, as set forth in the Articles of Incorporation.

The management and control of the business was, by its Articles of Incorporation, vested in and to be conducted by a Board of Directors of not less than five persons; the above-named incorporators being named as the persons to constitute the first Board of Directors, of whom Ben Goodrich was to be president, Henry Kinsley, vice-president, and A. N. Gage, secretary and treasurer.

That at the time of the organization of said Smelt-

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ing Company in the latter part of 1906, and during all of the time of the operation of the said Smelting Company as above set forth, the following named persons were directors of the Imperial Copper Company:

E. B. Gage.
W. F. Staunton.
A. N. Gage.
H. M. Robinson.
Selwin Eddy.
F. M. Murphy.
V. L. Mason.

and that the following named persons were officers of said corporation: [33]

E. B. Gage, President.

W. F. Staunton, Vice-president and General Manager.

A. N. Gage, Secretary and Treasurer.

That during practically all of the time said smelter was in operation, to wit, during the years 1907, 1908, 1909 and 1910, the following named persons were the directors of said Smelting Company:

E. B. Gage.
W. F. Staunton.
A. N. Gage.
H. M. Robinson.
F. M. Murphy.

and that the following named persons were the officers of said Smelting Company:

E. B. Gage, President.

W. F. Staunton, Vice-president and General Manager.

A. N. Gage, Secretary and Treasurer.

4. That each of the above-named incorporators subscribed for and became the owner of one share of the capital stock of said Smelting Company, thereby qualifying themselves to act as directors.

5. That thereafter, and on the 14th day of August, 1906, the said Imperial Copper Company and the said Southern Arizona Smelting Company entered into a contract in writing, duly authorized by the respective Board of Directors of each company, in words and figures following: [34]

THIS AGREEMENT, made this 14th day of August, 1906, by THE IMPERIAL COPPER COMPANY, a corporation, of Arizona, hereinafter called "Copper Company," party of the first part, and SOUTHERN ARIZONA SMELTING COMPANY, a corporation of Arizona, hereinafter called "Smelting Company," party of the second part, WITNESSETH, that

WHEREAS, the "Smelting Company" is a corporation organized under the laws of the Territory of Arizona, for the purpose of carrying on a general smelting and reduction business and purposes incidental thereto and has an authorized capital stock of \$1,500,000 divided into shares of \$100 each; and

WHEREAS, the Imperial "Copper Company" is a producer of ores carrying copper and other valuable metals, and has acquired a valuable smelter site and townsite in Pinal County, Arizona; and

WHEREAS, the Smelting Company desires to acquire said smelter site and have erected thereon a smelter plant of a capacity of approximately 300 tons, and especially desires to obtain a contract for

the ores of the "Copper Company" in order to have a basis on which to operate the smelter for outside customers' ores;

NOW THEREFORE, in consideration of the premises and in consideration of One Dollar in hand paid by each of the parties hereto to the other, and in consideration of the covenants and agreements hereinafter made to be kept and performed by the parties hereto respectively, it is agreed by the parties hereto as follows, to wit:

The "Copper Company" having acquired six hundred and forty acres of land for a smelter site and townsite, situated in Santa Cruz Valley at a point on the line of the Arizona Southern Railroad Company suitable for the erection of the smelter plant hereinafter described, agrees to erect thereon a smelter plant, together with all machinery and appliances necessary and convenient for the smelting and reduction of ores carrying values in copper and other metals, such plant, when completed, to have a capacity of approximately 300 tons daily, and to be complete in all particulars, the erection and construction of such plant and all appurtenances and appliances thereto to be carried on under the supervision of the "Smelting Company's" General Manager or Engineer, or both, and the work to be conducted in a manner satisfactory to "Smelting Company's" Engineer or Manager; and upon completion of such plant, "Copper Company" agrees to sell, convey and transfer by deeds, bills of sale and other instruments of conveyances and transfer, all of said tract of six hundred and forty acres, constituting

the smelter site and townsite, together with all buildings, plant and machinery upon said land and constituting said smelter plant; and agrees to furnish the "Smelting Company" with all ores of every kind produced from the mines of the "Copper Company" (whether such mines are now owned or hereafter acquired by the "Copper Company") that may be desired by the "Smelting Company," to be smelted and reduced by the "Smelting Company." The term of such contract to be a period of six months from and after the date of the beginning of operations of said smelter.

The smelting, reduction and marketing of such ores so delivered by the "Copper Company" to be done by the "Smelting Company" at the actual cost thereof, plus five per cent interest on the cost of the property and plant to the "Smelting Company."

[35]

IN CONSIDERATION of which the "Smelting Company" agrees to issue to the "Copper Company" or as it may direct, seven thousand nine hundred ninety-five (7,995) shares of the stock of the "Smelting Company," par value \$100 each, same to be fully paid, in payment for the real estate and plant so to be conveyed and transferred, and the contract for the furnishing of the ore by the "Copper Company" to form the basis for the "Smelting Company's" operations in custom ores.

And the "Smelting Company" further agrees to take and reduce the ores so to be furnished by the "Copper Company" upon the terms and at the prices for smelting hereinbefore set forth.

IT IS FURTHER AGREED by the parties that from time to time, as work on the plant and property progress, the "Smelting Company" will issue to the "Copper Company," at the option of the "Copper Company," shares of the capital stock, full paid and nonassessable, in payment for the property, plant and contract, as follows:

When work of construction one-quarter completed, three thousand five hundred (3,500) shares.

When work of construction one-half completed, one thousand five hundred (1,500) shares additional.

When work of construction three-quarters completed, one thousand five hundred (1,500) shares additional.

When work of construction completed, one thousand four hundred ninety-five (1,495) shares additional.

and the certificate of the Engineer of the "Copper Company" that the work has arrived at any of the above stages shall be sufficient to entitle the "Copper Company" to receive certificates for the shares of stock, as above set forth.

IN WITNESS WHEREOF, the party of the first part has caused its corporate name to be hereunto affixed by its President duly attested by its Secretary, and its corporate seal to be hereto attached, the day and year above written, all by authority of a resolution passed by its Board of Directors the 14th day of August, 1906.

And Party of the second part has caused its corporate name to be hereto affixed by its President,

duly attested by its Secretary, and its corporate seal to be hereto attached the day and year above written, all by authority of a resolution passed by its Board of Directors the 14th day of August, 1906.

THE IMPERIAL COPPER COMPANY,

By E. B. GAGE,
President.

Attest: A. N. GAGE,
Secretary.

SOUTHERN ARIZONA SMELTING COM-
PANY,

By BEN GOODRICH,
President.

Attest: A. N. GAGE,
Secretary. [36]

6. In pursuance of said contract the Imperial Copper Company did erect a smelting plant on the 640-acre tract above mentioned, and did convey the same to the Smelting Company, and thereafter, and on the —— day of ———, 1907, said Smelting Company did cause 7,995 shares of its capital stock to be issued and delivered to the Imperial Copper Company in payment therefor, in accordance with said contract.

That at said time a total of 8,000 shares of stock were issued, of which 7,995 shares were issued to said Imperial Copper Company, and the remaining five shares had theretofore been issued to qualify the said directors, as heretofore stated, and no other shares of its capital stock at that time were issued or outstanding.

7. That thereafter, and about the time that the

said Smelting Company was ready to commence operations at its said smelting plant, it entered into a written contract, of date the 16th day of December, 1907, with the American Metal Company, Limited, a corporation of the State of New York, as party of the second part, and said Imperial Copper Company, as party of the third part, in words and figures following: [37]

AGREEMENT made this sixteenth day of December, 1907, by and between the SOUTHERN ARIZONA SMELTING COMPANY, a corporation organized and existing under the laws of the Territory of Arizona, party of the first part; THE AMERICAN METAL COMPANY, LIMITED, a corporation organized and existing under the laws of the State of New York, party of the second part, and THE IMPERIAL COPPER COMPANY, a corporation organized and existing under the laws of the Territory of Arizona, party of the third part,

WITNESSETH:

That for and in consideration of the sum of One Dollar by each of the parties hereto to the other in hand paid, the receipt whereof is hereby respectively acknowledged, and in consideration of the covenants and agreements hereinafter contained, it is agreed by and between the parties to these presents as follows:

I. The party of the first part agrees to sell and hereby does sell at the price and upon the terms hereinafter set forth to the party of the second part, the entire output of copper now or at any time during the existence of this agreement smelted, owned or controlled by it, which it guarantees shall not be less

than one million two hundred and fifty (1,250,000) thousand pounds to one million five hundred thousand (1,500,000) pounds monthly, subject to conditions hereinafter set forth, for a period of three (3) years beginning with the first shipment expected to be made in January, 1908, and terminating three (3) years thereafter.

While it is agreed that this contract shall cover the entire output of the party of the first part, it is understood that whenever such output shall exceed one million five hundred thousand (1,500,000) pounds monthly, two (2) months written notice of such increase, specifying approximately the amount thereof, shall be given, and the party of the second part shall have ten (10) days from the receipt of such notice in which to decide whether or not it shall accept the increase.

If at any time such entire output shall fall below one million two hundred and fifty thousand (1,250,000) pounds of fine copper monthly for any reason whatsoever, not the fault of the party of the first part, such deficiency shall be shipped after what would otherwise be the expiration of this contract in monthly quantities approximately equal to previous monthly shipments; and when so shipped the terms of this contract shall be considered as having been complied with in so far as the same relate to the guarantee of the quantity of monthly shipments.

II. The copper shall be delivered by the party of the first part to the party of the second part at New York, lighterage free, or at the option of the producers at Nichols Siding, Long Island Railroad,

provided no additional expenses thereby be occasioned the party of the second part.

Said deliveries to be made in the form of blister copper inplates, measuring about seventeen (17) inches by about twenty-four (24) inches and not more than two and one-half ($2\frac{1}{2}$) inches thick, and assaying about ninety-eight and one-half per cent ($98\frac{1}{2}$) *per cent*, or more in copper; up to two hundred (200) ounces in silver and up to five (5) ounces in gold per ton of two thousand pounds; and to be free from impurities that interfere with the making of prime electrolytic copper. [38]

III. The party of the second part agrees, at the request of the party of the first part, to advance and pay the freight charges upon the said deliveries of copper when the same shall become due in New York, and upon receipt of consignment to use due diligence in causing the same to be weighed, sampled and assayed as hereinafter provided; and to account to the party of the first part at its office in New York on the due dates as hereinafter defined for the copper, gold and silver contents of said consignments, less all advances, if any, with interest thereon; also less refining charges as hereinafter specified; it being mutually agreed that in no case shall the weighing and sampling be finished later than ten (10) days after arrival of consignments at Nichols Siding or New York, lighterage free. The party of the first part shall give the party of the second part prompt written notice of each shipment.

The party of the first part shall have the privilege of drawing at sight upon the party of the second part

for ninety (90) per cent of the approximate value of such blister copper, less freight and interest and refining charges as above set forth, as shown by bill of lading, satisfactory assay certificates (the assay certificates will be satisfactory if approved by the General Manager or Local Superintendent of the party of the first part), smelter and railroad scale weights attached to the draft, in which event the party of ~~the~~ first part shall allow the party of the second part interest at the rate of six (6) per cent per annum, on such advances from the day the drafts are paid until dates when payments would otherwise be due.

It is understood that in case of a decline in the price of copper during the time the blister copper is in transit and until such time as payment for the copper contained therein becomes due, the party of the first part is to make good to the party of the second part any difference thus arising, so that a margin of ten (10) per cent of the value of the consignment is at all times maintained between the value of such consignment and the amount of the draft drawn by the party of the first part.

Whenever an advance has been made by the party of the second part upon any shipment of copper by means of a draft drawn by the party of the first part, as above provided, and any of such copper be lost or for any cause whatever not delivered to the party of the second part within a reasonable time, in no event to exceed sixty days after such advance, the party of the first part shall promptly repay the

party of the second part the amonut of such draft with interest.

IV. It is mutually agreed that each delivery of blister copper shall be weighed and sampled upon arrival at the refining works by the parties of the first and second parts hereto jointly, and by methods mutually agreed upon by them, each such party paying its own representative.

Three (3) pulp samples shall be taken of the samples secured and one assayed by each of the parties of the first and second part, and the average of the two shall be final. Provided, however, that if the discrepancies between the two shall be greater than two tenths (.2) per cent as to copper or one (1) ounce as to silver, or three hundredths (.03) ounce as to gold per ton of two thousand (2000) pounds then in each such case the third sample shall be delivered to LUCIUS PITKIN as referee for assay, or to such other referee as may be equally satisfactory to both parties; and the average between his assay and that of the two which is nearest to his shall be accepted by both parties as the correct assay; and all expenses of such [39] reference shall be borne by the party whose assay proves farthest from that of the referee's.

The methods to be pursued in determining the copper, silver and gold contents of such deliveries of blister copper shall be those which, after investigation by the chemists of each of the parties of the first and second part shall prove to the satisfaction of all such chemists to give results nearest to the

actual amounts of copper, gold and silver contained in the material received.

V. The party of the second part agrees to purchase and hereby does purchase the said material from the party of the first part upon the terms herein set forth, and agrees to pay to the party of the first part for the same in the manner following:

For all gold at the rate of twenty dollars (\$20) per ounce, provided contents are five hundredths (.05) ounce per two thousand (2000) pounds, or above; if contents are below five hundredths (.05) ounce per thousand (2000) pounds, no payment to be made therefor.

For the silver contents in said material if the same amount to one hundred (100) ounces per two thousand (2000) pounds, or less, for all such silver; if said material contains above one hundred (100) ounces per two thousand (2000) pounds, then for ninety-nine (99) per cent of the silver so contained in said material at the average quotation for fine silver as published by the Engineering and Mining Journal of the City of New York for the week during which the material is sampled at the refiners.

For the copper contained in said material on the basis of electrolytic assay, at the average price of electrolytic copper in cakes, wirebars or ingots, as quoted daily in the Engineering and Mining Journal of New York for the week during which the material is sampled at the refiners. If two quotations are given by said Engineering and Mining Journal of New York the mean of the two to be taken as a basis for payment.

The term "week" to be understood as the six days quoted in the Engineering and Mining Journal and running from Thursday to Wednesday.

The party of the second part shall deduct and be entitled to retain from the moneys that may be payable to the party of the first part pursuant to the terms of this contract for the cost of refining such material fifteen dollars (\$15) per two thousand (2000) pounds of copper find.

The due dates upon which the party of the second part agrees to account and pay for the material to be as follows:

- a. For the gold and silver ninety (90) days from date of arrival of the consignment at Nichols Dock or Siding or lighterage free New York.
- b. For the copper sixty (60) days from date of arrival of the consignment at Nichols Dock or Siding, or lighterage free New York. [40]

VI. It is understood and agreed that any and all notices required or permitted to be given to either party under the terms of this contract shall be deemed sufficient if made in writing and delivered at their office in the City of New York.

VII. It is mutually understood and agreed that neither of the parties of the first and second part shall be liable for unavoidable delays in the performance thereof, or for damages as a result of such nonperformance which shall be occasioned by war, labor strikes, fire or accidents arising in their respective works or mines, or on transportation lines

or from other causes over which they have no control.

VIII. Whenever for a continuous period of at least thirty (30) days the price of electrolytic copper in cakes, wirebars or in ingots as quoted in the Engineering and Mining Journal of New York, shall be below ten cents (10¢) per pound, the party of the first part shall have the option to suspend shipments under this agreement, so long as the price of such copper shall continue to remain below ten cents (10¢) per pound, provided it gives the party of the second part written notice of its intention so to do, and in that event the period of three (3) years called for by this agreement shall be extended as much longer as such shipments be so suspended.

IX. If the party of the first part shall be prevented by war, labor, strike, fire, accident or other causes beyond its control from producing any copper during any month, it shall be absolved from making any shipments during such months; but in that event it shall be obligated to resume shipments as soon thereafter as such obstacles have been overcome until the entire quantity called for by this contract shall have been shipped to the party of the second part.

And whenever the party of the second part shall be prevented by war, labor strike, fire, accident or other cause beyond its control from having said copper refined, it shall be absolved from accepting any shipments during the time that such obstacle exists, provided that during such time the party of the second part shall at its own expense furnish a

suitable and safe place for the storage of shipments of the party of the first part under this agreement; but in the event that any such obstacle shall continue to exist for a period longer than sixty (60) days, the party of the first part shall have the privilege of suspending this agreement until the party of the second part shall be able to resume the refining of copper; and in that event, the party of the first part shall, at its option, have the right to make other disposition of its copper until refining can be resumed; and the party of the second part agrees to make all reasonable efforts to resume the refining of the copper under this agreement as quickly as possible by means if the refinery then used or some other refinery; and if any other refinery be used for that purpose the copper shall be shipped to the most convenient spot for delivery at such refinery and any additional expense in the matter of freight or forwarding charges in excess of such freight and forwarding charges to the points above designated shall be borne by the party of the second part.

It is further agreed that if the party of the first part shall be prevented for any of the causes above specified in this article beyond its control from producing any copper for a continuous period of one hundred and twenty (120) days; or if the party of the second part shall be prevented for any of the causes above provided in this article beyond its control from having any shipment [41] of copper to it refined as in this agreement provided, for a continuous period of one hundred and twenty (120) days, then in either of such events the other of said

parties of the first or second part, as the case may be, shall have the privilege to terminate this agreement upon giving the party so prevented, ten (10) days' written notice of intention so to do, whereupon this agreement shall at the end of said ten (10) days terminate and be of no further force and effect; except that all outstanding unsettled and unadjusted matters between the parties of the first and second part under this agreement shall thereupon be promptly settled, adjusted, liquidated and paid.

X. In the event that at any time any question or difference shall arise between the parties of the first and second part hereto, growing out of the interpretation of or operation under this contract, such questions shall be disposed of by arbitration.

To that end each of the parties of the first and second part shall within ten (10) days from the time either party declares its intention to arbitrate, appoint an arbitrator who shall hear the evidence and proofs submitted by each of the parties to the controversy, in the city of New York, and such arbitrators shall dispose of such questions within ten (10) days of their appointment and their decision shall be final. In case, however, that the said arbitrators shall be unable to agree, they shall within five (5) days of their inability to agree, appoint an umpire who shall consider the proofs already taken and hear such further proofs or statements as he may desire, and in that event his decision as to the question in controversy shall be final and conclusive and binding upon the parties to this agreement.

XI. And the party of the third part hereto representing that it owns practically all of the stock of the said party of the first part hereto, and owns or controls some of the mines from which the party of the first part is to acquire ore covered by this agreement, and as a further inducement for the party of the second part to enter into this agreement, the party of the third part hereby guarantees to the said party of the second part the prompt and faithful performance by the said party of the first part hereto of all the terms and provisions of this agreement on the part of said party of the first part to be done or performed, and the party of the third part hereto waives notice of each and every default under this agreement on the part of the party of the first part.

XII. It is expressly understood and agreed that the party of the second part may from time to time, as it sees fit, make any advance or loan of money to The Development Company of America, or the party of the third part, upon any terms it thinks proper, and that any advance or loan already or hereafter made by the party of the second part to the Development Company of America, or to the party of the third part shall not in *any affect* this agreement.

XIII. Finally it is mutually agreed that the covenants herein contained shall inure to the benefit of and bind the successors and assigns of the respective parties.

IN WITNESS WHEREOF the parties hereto have caused these presents to be signed and executed in triplicate by their respective corporate offi-

cers and their respective corporate seals to be hereunto affixed by order of their respective Board of Directors [42] the day and year first above written.

SOUTHERN ARIZONA SMELTING COMPANY.

By E. B. GAGE,
President.

(Seal)

A. N. GAGE,
Secretary.

Witness:

W. F. STAUNTON.

THE AMERICAN METAL COMPANY,
“LIMITED.”

By J. LANGELOTH,
President.

(Seal)

Attest: JULIUS GOLDMAN,
Secretary.

THE IMPERIAL COPPER COMPANY.

By E. B. GAGE,
President.

(Seal)

A. N. GAGE,
Secretary.

W. F. STAUNTON. [43]

8. That thereafter, and on April 13, 1908, the said Imperial Copper Company and the said Southern Arizona Smelting Company entered into another agreement in words and figures following, to wit:

“THIS AGREEMENT made this 13th day of April, 1908, between The Imperial Copper Company, a corporation of Arizona, hereinafter called

“Copper Company” party of the first part, and Southern Arizona Smelting Company, a corporation of Arizona hereinafter called “Smelting Company” the party of the second part, supplemental to the agreement of the 14th day of August, 1906, between same parties.

WITNESSETH: That the Smelting Company desires to increase its present capacity by the addition of a duplicate of the present blast furnace, duplicate of the present blowing engine unit, duplicate of ore bins and all needful accessories, and

WHEREAS the Copper Company, as a part of the original agreement of the 14th day of August, 1906, before mentioned, is willing to furnish the necessary plant and equipment upon the terms and conditions herein set forth.

NOW, THEREFORE, in consideration of the premises and in consideration of one dollar in hand paid by each of the parties hereto, and in further consideration of the carrying out of the covenants and agreements hereinafter made to be kept and performed by the parties hereto respectively, it is agreed as follows, to wit:

The Copper Company agrees that on request of the Board of Directors of the Smelting Company it will cause to be delivered and erected one duplicate of the present blast furnace and one duplicate of the present blowing engine unit and all necessary extensions of buildings, ore bins and other needful accessories, the same to be complete and ready for operation, and agrees that it will accept in payment therefor, one thousand shares of the fully paid stock

of the Smelting Company, such shares of stock to be delivered in payment of the property and plant as follows:

When work of construction one quarter completed, two hundred and fifty shares.

When work of construction one half completed, two hundred and fifty shares additional.

When work of construction three quarters completed, two hundred and fifty shares additional.

When work of construction completed, two hundred and fifty shares additional.

The Certificate of the Engineer in Charge of Smelting Company that work has arrived at any of the above stages of completion shall be sufficient evidence to entitle the Copper Company to receive certificates of shares of the stock as above set forth. The Smelting Company hereby agrees to deliver the stock in payment for the construction in the manner and at the times hereinbefore set forth.

IN WITNESS WHEREOF the parties hereto have caused their respective corporate names to be hereto affixed by the President [44] and Secretary of first party, and the Vice-President and Secretary of the second party the day and year above written. All by authority of resolutions passed by the respective Board of Directors of the parties hereto.”

That in pursuance of said agreement the Imperial Copper Company did erect such additional plant on the lands of the Smelting Company and the said additional plant was completed and the Smelting

Company did issue to the Copper Company the additional 1000 shares of its capital stock, on or about the 10th day of November, 1908.

9. The smelter plant of the Smelting Company so erected, was situate on said 640-acre tract of land, about ten miles from the mines of the 'Imperial Copper Company. A railroad, owned by the Arizona Southern Railroad Company, ran from said mines to the smelter, and thence about twelve miles to the station of the Southern Pacific Railroad Company at Red Rock.

The smelter plant of the Southern Arizona Smelting Company was completed and commenced operations about January 1, 1908, and continued in operation until about August 15th, 1910, when the same was closed down, and it has not been operated since.

10. From the time the Smelting Company commenced operating its smelter in 1908, down to the time it ceased operating, in 1910, the Imperial Copper Company shipped to it all of the ores which it extracted from its mines, being over five hundred thousand tons, and the same were smelted and reduced to bullion by the Smelting Company. The ores shipped by the Copper Company were received and smelted by the Smelting Company in accordance with the terms of the said contract between the two companies of date August 14, 1906, aforesaid, and the bullion produced by the Smelting Company was by it sold to the American Metals Company, Ltd., in accordance with the terms of the said contract between the said Smelting Company, said American Metal Company and the Imperial Copper

Company, of date December 16, 1907, aforesaid.
[45]

11. The manner in which said business was transacted between said companies under said contracts was as follows:

The Imperial Copper Company shipped its ore to the Smelting Company in carload lots. Both companies made assay of the ore so shipped. The assay of the Smelting Company controlled unless there was a great variation, when the sample of each company was given to an umpire who assayed the same, and the assay of the umpire was taken as final.

Shipments of ore were made every day by the Copper Company to the Smelting Company, and an assay was made of every lot; a lot comprised one or more cars of ore. Smelter returns upon each lot of ore so sampled and assayed by the Smelting Company were made by it; duly signed, checked by its clerks and given to the Imperial Copper Company. Each of said smelter returns was in the following form, as shown by the smelter return of September 10, as follows, to wit: [46]

68 Matter of Southern Arizona Smelting Co.

SOUTHERN ARIZONA SMELTING COMPANY

Sasco, Arizona, September 8th, 1910.

Bought of IMPERIAL COPPER CO.,

Address Silverbell, Arizona.

New York Quotations:

Rate Authority:

Numbers:

Avg. E. & M. Journal

Date 7/28 to 8/13 Incl.

Silver cts. per oz.

Copper 12.417 cts. per lb.

Date Sampled, Aug. 1-13th Incl.

Class Union Ore.

Smelter Lot No. See Under

Shipper's Lot No. "Car No."

Per Total
Ton Values

CAR

WEIGHT.

Init.	No.	Wet	Moist	Dry
Lot	Nos.	3,094,880	5.1	2,936,928
Sm.	Mine			
3926	3697			
3930	3701			
3934	3705			
3938	3709			
3943	3713			
3947	3717			
3965	3736			
3969	3739			

Payments

Gold	Ozs.	@ \$	
Silver N. P.	Ozs.	% @	cts.
Copper	2.32 %	46.4 lbs. @	9.917 cts. 4.60
Fe	%	@	cts.
Mn	%	@	cts.
CaO	%	@	cts.
Copper			
Credit	% Excess	@	cts. 4.60

Deductions:

Treatment 2.30

Gold	Silver	Wet Copper
	0.40	3.20

ANALYSIS

Ins.	SiO ₂	Fe	Mn.	CaO	Al ₂ O ₃	S.	Zn.	Sulphur	%	@	cts.
	37.8	16.9		19.1		2.7		Zinc	%	@	cts.

Sintering Concentrates and fine ore

2.30

Price per ton

2.40

Gross Proceeds 1,468,464 Tons @ \$2.40

Less Freight from Silverbell: Prepaid.

Less Switching

Less Sampling and Assaying

3,524.31

Balance Due

Correct:

D. G. H.

Invoice Clerk.

Checked:

D. G. H.

Approved:

MEADE GOODLOE,

Superintendent.

3,524.31

The net value of each ore shipment, so ascertained and shown on each smelter return, was credited to the account of the Imperial Copper Company on the books of the Smelting Company; and the amount was also entered on the books of the Imperial Copper Company, as representing the value of the ore so shipped by the Copper Company to the Smelting Company.

All ore shipments made by the Copper Company to the Smelting Company were handled in the same way, and as to each shipment similar entries to the above were made in the books of each company respectively.

The bullion which resulted from the smelting of these ores, and all other ores smelted by the Smelting Company, was by the Smelting Company shipped and sold to the American Metal Company. The proceeds of these sales were eventually received by the Imperial Copper Company and were by it credited on its books to the account of the Smelting Company.

Upon each shipment of bullion received by the American Metal Company from the Smelting Company, the American Metal Company rendered to the Smelting Company an "Account Sales," accompanying the same with the assay certificate of the bullion, freight bills, advances made thereon, etc., value and net balance due therefor. A copy of one of which said "Account Sales" is in words and figures as follows: [48]

70 Matter of Southern Arizona Smelting Co.

June 4, 1910.

ACCOUNT SALE

FOR THE SOUTHERN ARIZONA SMELTING COMPANY
TOMBSTONE, ARIZONA.

BY THE AMERICAN METAL COMPANY, NEW YORK, N. Y.

Lot No.	No.	Bars.	Weight.	Assay Per Ton.			Total Net Contents.			Value of Contents.	
				AU OZ	AG OZ	CU %	AU OZ	AG. OZ	COPPER POUNDS.	AU	AG
197	375	101209		.19	40.10	99.21	9.109	2029.24	100409	182.18	1091.98

COPPER

12676.64

TOTAL VALUE

13,950.80

LESS: Refining..... 753.07

Interest..... 163.19

Freight..... 505.30

Advance.....11700.00

13,121.56

829.24

5/19—5/25/10

GOLD FIGURED AT \$20.00

SILVER

Copper..... .53—8125

..... .12—625

12. The Smelting Company obtained a bill of lading from the Railroad Company for each car of bullion which it so shipped to the American Metal Company, which bill of lading it endorsed and delivered to the Imperial Copper Company with the smelter assay, weight, approximate value, showing the gross value of the bullion, attached thereto; the Imperial Copper Company then drew a draft on the American Metal Company in favor of the Development Company of America for 90% of the gross value, which draft the Copper Company sent to the Development Company of America in New York; and the Copper Company then also drew a draft for like amount on the Development Company of America and deposited the same to its, said Copper Company's credit with the Phoenix National Bank in Arizona.

The amount of the draft, covering the transaction was credited by the Copper Company on its books to the Smelting Company, and the Smelting Company made entry on its books of the total monthly amounts of such drafts as a charge against the Imperial Copper Company. After the American Metal Company rendered its Account Sales for the lot of bullion so shipped, showing the balance due from it on account of each shipment, the said balance was paid to the Imperial Copper Company in like manner as above set forth, and such balance was likewise credited by it on its books to the account of the Smelting Company and each month the Smelting Company charged the Copper Company with the amounts so received by it.

13. The Smelting Company did not keep any bank account with any bank. The method by which it paid its bills, including labor, materials, coke, fuel and all other charges which it had to pay in the conduct of its business was as follows: It made out vouchers which were O. K'd by its superintendent, and he sent them to the Imperial Copper Company with a request to pay [50] them and charge the same to the account of the Southern Arizona Smelting Company. The Imperial Copper Company paid the vouchers, and charged the amount against the Smelting Company, and entries thereof were made on the books of the Imperial Copper Company, showing the transaction; and like entries were made on the books of the Smelting Company.

The Imperial Copper Company did not pay any amounts for the Smelting Company which it did not charge against the Smelting Company.

The accounts between the two companies were balanced monthly.

The Smelting Company kept its own separate books of account and a set of operating books; and entered all items therein, including all items paid for it by the Imperial Copper Company.

14. In addition to smelting the ores for the Imperial Copper Company, the Smelting Company also smelted ores for other persons and corporations, such as the El Tiro Copper Company, the Poland Mining Company, Mackomick Mercantile Company, and others.

A record was kept by the Smelting Company of all ores purchased by it from all such other parties

and corporations, down to the time it ceased operations, which showed in detail the weight of the ore, amount of ore shipped, treatment charge and other deductions, and the balance due to the shipper for the lot so shipped. A smelting return was made by the Smelting Company of each lot of ore so shipped to it for each of such other shippers, and payment for the ore was made of the balance, after making the deductions just mentioned; such return being in a form similar to the smelter return heretofore set forth.

The payment for ore so smelted and purchased from other persons by the Smelting Company was made by an order drawn by it [51] upon the Imperial Copper Company, and this order was paid by the Imperial Copper Company and was charged against the account of the Smelting Company.

15. In conducting its smelting operations, the Smelting Company purchased flux, that is, iron, lime and sulphur, and this expense for flux was a part of the expense of the smelter operations, the same as labor. Coke was also purchased by the Smelting Company and from January, 1908, to September 30, 1910, coke of the value of over \$500,000.

This coke and flux was also paid for by vouchers drawn by the Smelting Company from time to time, on the Imperial Copper Company and the Imperial Copper Company paid the same and charged the amount upon its books against the Smelting Company, in its account against it; the Smelting Company also kept an account thereof on its books.

16. The books of both companies further show

that after the smelting plant of the Smelting Company was closed down, the Smelting Company continued to present vouchers for labor, material and other items of like nature, to the Imperial Copper Company, with its request that it pay the same, and that the said Imperial Copper Company did pay the same, so that on the 5th day of July, 1911, when the petition in bankruptcy was filed against the Imperial Copper Company, the Imperial Copper Company, as shown by its books, had paid out for the Smelting Company a total of \$26,887.71 in excess of all the amounts of money which it had credited to the account of the Smelting Company, so that on said date there remained, according to said books, a balance due from the Smelting Company to the Imperial Copper Company of said sum of \$26,887.71. [52]

17. That on the 5th day of July, 1911, certain creditors of the Imperial Copper Company filed with the District Court of the First Judicial District of the Territory of Arizona their petition to have said Imperial Copper Company declared a bankrupt, and thereafter, and on the 25th day of July, said Imperial Copper Company was declared a bankrupt, and thereafter, and on the 12th day of August, 1911, M. P. Freeman was duly elected the Trustee in Bankruptcy of said Imperial Copper Company; that he qualified as such on the 26th day of August, 1911.

That on the 23d day of January, 1912, said M. P. Freeman, as Trustee in Bankruptcy of the Imperial Copper Company, Bankrupt, brought suit against said Southern Arizona Smelting Company, before

the District Court of the First Judicial District of the Territory of Arizona, in and for Pima County, wherein, as such Trustee, he sought to recover from said Smelting Company the sum of \$26,887.71, with interest thereon, being the said balance so advanced or paid by the Imperial Copper Company for the said Smelting Company, and being the total amount which the books of each of said companies showed was due from the said Smelting Company to said Imperial Copper Company, which said suit is still pending before the Superior Court of Pima County, for the State of Arizona, the successor of said Territorial District Court, aforesaid, and is still undetermined.

18. That thereafter, and on the 17th day of June, 1914, the said Trustee in Bankruptcy of the Imperial Copper Company did, under the order of the bankruptcy court wherein the said bankruptcy proceeding was pending, to wit, the United States District Court for the District of Arizona, upon application therefor, made by certain creditors of said Imperial Copper Company, bankrupt, cause a writ of attachment to issue in the said suit then pending in the Superior Court of Pima County, [53] State of Arizona, aforesaid, against said Southern Arizona Smelting Company, and did, on the 19th day of June, 1914, cause said writ of attachment to be levied upon all of the real property of said Southern Arizona Smelting Company, which said writ of attachment is still pending.

19. That on the 17th day of June, 1914, the said M. P. Freeman did resign as Trustee in Bankruptcy

of the said Imperial Copper Company, bankrupt, which resignation was accepted by the United States District Court for the State of Arizona, on July 1, 1914, and on said day John H. Martin, the petitioner in the present proceeding, was elected and appointed Trustee in Bankruptcy of the said Imperial Copper Company, bankrupt, to fill the vacancy caused by the resignation of said M. P. Freeman, as such, and on July 2, 1914, said John H. Martin duly qualified as such trustee in bankruptcy of said Imperial Copper Company, and ever since has been and now is the trustee in bankruptcy of said Imperial Copper Company, bankrupt.

20. That the flue dust and slag dump, which is the subject matter of the present controversy, were the residuum or residue which arose from the smelting of ores by the said Southern Arizona Smelting Company from the period when it commenced its smelting operations in 1908, down to the time it closed down its plant in 1910, and was created in the following manner:

The ores received by the Smelting Company were placed in its smelter, together with coke and flux. The coke was ignited and a blast of air was turned on to the mass; the fine particles of ore and coke were thereby blown into a stack, which stack ended in a chamber, in which chamber the dust was collected continuously during the smelting operations, and this dust constitutes [54] the flue dust, the subject matter of this action, and the pile thereof now amounts to between 9,000 and 10,000 tons.

The ores being smelted or melted, the copper or

bullion or metal contents were drawn off, which resulted in bullion, and the residue was drawn off, which constituted the slag; this slag was collected in a dump, and constitutes the slag dump in controversy in this action, amounting to many thousand of tons of slag.

21. Upon the Smelting Company shutting down its plant and ceasing operations, on August 15, 1910, George W. Dietz, secretary and acting manager of said corporation, took possession of all of its property, including the said flue dust and slag dump, was situate on the real property of said corporation, at its smelting plant at Sasco, Arizona; and he remained in actual charge and control thereof, for said Smelting Company, until the said Smelting Company was declared a bankrupt, and a trustee in bankruptcy was appointed for it, when he delivered possession thereof to the trustee in bankruptcy of said Smelting Company on or about the 31st day of October, 1914.

And during all of said times, to wit, from the time that said Dietz took possession of the property for the said Smelting Company in August, 1910, down to the said 31st day of October, 1914, when said Trustee in Bankruptcy of the Southern Arizona Smelting Company was appointed and qualified, the said Southern Arizona Smelting Company had possession and claimed the ownership of the said flue dust and the said slag dump.

22. That the said M. P. Freeman, as Trustee in Bankruptcy of the Imperial Copper Company at no time, from his appointment as such in July, 1911,

down to the time that he resigned said trust in July, 1914, ever took possession of or claimed possession [55] or title to the said flue dust or the said slag dump, as being the property of said Imperial Copper Company, bankrupt.

That on July 10, 1910, claims of creditors aggregating about one million two hundred thousand dollars had been filed with the Referee in the matter of Imperial Copper Company, bankrupt; that on said day certain of said creditors, whose claims aggregated about \$40,000 served a written notice on M. P. Freeman, as Trustee in Bankruptcy of said Imperial Copper Company, requesting him "to take possession and control, as a part of the assets of the Imperial Copper Company, a corporation, bankrupt herein, of all of the assets of the Southern Arizona Smelting Company, which consist of a smelting plant, real estate, machinery and equipment, slag dump, etc., situate in Sasco, in Pinal County, Arizona." Which said trustee, acting under the advice of Selim M. Franklin, Esq., his attorney, refused to do, upon the ground that the property mentioned in said request was the property of said Southern Arizona Smelting Company and not the property of said Imperial Copper Company;

That on the 20th day of September, 1911, the appraiser appointed in the matter of the Imperial Copper Company, bankrupt, filed their appraisement and report, wherein, they did estimate and appraise, among other items the following:

"Southern Arizona Smelting Co. Real estate; machinery and equipment, \$125,000."

23. On or about July 5th, 1914, the said John H. Martin, as Trustee in Bankruptcy of the said Imperial Copper Company, after being qualified as such, went to the said smelting plant, aforesaid, where the said slag dump and flue dust were, and took possession, or attempted to take possession, thereof, by posting notices stating that he had taken possession, and by leaving a keeper on the ground, who remained there until on or about the [55½] 31st day of October, 1914, when M. P. Freeman qualified as the Trustee in Bankruptcy of said Southern Arizona Smelting Company, and took possession of the property of said Smelting Company as such Trustee in Bankruptcy. But during the time that said John H. Martin, as Trustee, had a keeper or custodian on the ground, the said Southern Arizona Smelting Company also had a keeper or custodian, who also claimed to be in possession of said flue dust and slag dump.

24. Between the time that the Smelting Company was organized and down to the time it was adjudicated a bankrupt, on September 29, 1914, it declared only one dividend to its stockholders, to wit, on the 31st day of October, 1909, the amount of said dividend being the sum of \$49,853.62. This dividend was paid to the Imperial Copper Company, as it appeared at that time as the registered owner on the books of said Smelting Company, as the owner of all the stock of said Smelting Company.

25. That after the levy of the attachment, aforesaid, in July, 1914, upon the real property of the said Smelting Company in the said suit of the Trus-

tee in Bankruptcy of the Imperial Copper Company against said Smelting Company, to wit, on the 29th day of September, 1914, said Smelting Company filed its voluntary petition in bankruptcy in the District Court of the United States for the District of Arizona, in the present proceeding, and on said day was by the Court adjudicated a bankrupt; that thereafter, and on the 31st day of October, 1914, M. P. Freeman duly qualified as the Trustee in Bankruptcy of said Smelting Company, and ever since has been and now is the Trustee in Bankruptcy of said Southern Arizona Smelting Company.

26. That on the 25th day of August, 1915, the said [56] John H. Martin, Trustee in Bankruptcy of said Imperial Copper Company did file with the Referee of this court, in the matter of the bankruptcy of said Southern Arizona Smelting Company, bankrupt, the said claim of the Imperial Copper Company, bankrupt, for the said balance of account of \$26,887.71, with interest, claimed to be due the estate of said Imperial Copper Company, bankrupt, from the said Southern Arizona Smelting Company, bankrupt, which said claim was filed as a secured claim; said claim being the same claim for which suit was brought by the Trustee in Bankruptcy of the Imperial Copper Company against the said Southern Arizona Smelting Company, in the year 1911, heretofore referred to, and which suit is still pending.

29. That in addition to said claim of Imperial Copper Company, bankrupt, so filed and allowed as aforesaid, the following claims against the said

Matter of Southern Arizona Smelting Co. 81

Southern Arizona Smelting Company, bankrupt, have also been filed with the said Referee, as claims against said Southern Arizona Smelting Company, bankrupt, and have been by him duly allowed, to wit:

Name of Creditor.	Amount of Claim.
Consolidated National Bank.	\$20,000.00 and interest
Aubrey & Semple.....	1,894.12 “ “
Colorado Fuel & Iron Com- pany	27,759.71 “ “
F. M. Murphy	4,897.59
B. P. Cheney	3,073.81
Poland Mining Company....	311.05
F. M. Murphy and B. P. Cheney	1,500.00 and interest
Louis St. Louis	400.00
George W. Dietz	400.00
<hr/>	
60,238.28 [57]	

28. That on or about the 13th day of April, 1908, the Imperial Copper Company duly authorized its president to enter into an agreement with the Bankers Trust Company, as Trustee for the bondholders of the bonds authorized to be issued as aforesaid, whereby the Imperial Copper Company should mortgage or pledge to the Bankers Trust Company, as further security for said bonds, all of the shares of the capital stock of the Smelting Company which it, the Copper Company, owned, being about 9,000 shares, in consideration of the Bankers Trust Company, as Trustee, releasing the lien of its trust deed or mortgage upon the said 640 acres of land which

the Copper Company had agreed to convey, or had conveyed to the Smelting Company.

29. That thereafter, and in pursuance of said authority, the Bankers Trust Company did release its lien on the said 640 acres of land, aforesaid, and the Imperial Copper Company did assign and pledge to said Bankers Trust Company and deliver to it, as Trustee, all of the shares of the capital stock of the Smelting Company, which said Copper Company owned, being, as aforesaid, about 9,000 shares, being all of the issued capital stock of said Smelting Company, except the five shares issued to authorize the directors to act as such.

That on the 21st day of December, 1908, the Imperial Copper Company duly executed to the Bankers Trust Company, Trustee for the bondholders, as aforesaid, an instrument in writing, which, amongst other things, contained the following provision:

“That for and in consideration of one dollar by the party of the second part (Bankers Trust Co.) to the party of the first part (Imperial Copper Co.) in hand paid, the receipt of which is hereby acknowledged, and for and in consideration of other valuable considerations moving from the Trustee and from the bondholders to the Company, the receipt of which are also acknowledged, the said Company deposits at the execution of this instrument, with the Trustee, duly assigned to such Trustee, all of the stock of the said Arizona Southern Railroad Company and all of the outstanding stock of said [58] Southern Arizona Smelting Company;

that is to say, 8,000 shares of said Railroad Company, and 9,000 shares of said Smelting Company, as additional collateral to secure the payment of the principal and interest of any bonds at any time issued and outstanding under the aforesaid indenture; and the Company (Imperial Copper Co.) party of the first part, has sold, assigned and transferred, and by these presents does sell, assign and transfer unto the party of the second part (Bankers Trust Co.) Trustee, its successors and assigns forever, all the rights, title and interest which the Company (Imperial Copper Co.) has or shall be entitled to, in said stock, in the same manner, and to the same effect as if said shares of stock had originally been deposited as part of the collateral or security under the aforesaid mortgage indenture . . . It is further understood and agreed that this agreement is subject to all the terms of said indenture (or trust deed) and especially to Article VIII thereof."

That the certificates for the shares of stock, which theretofore had been issued by the Smelting Company to the Imperial Copper Company, and which were so pledged as aforesaid, were not transferred on the books of said Southern Arizona Smelting Company until the 20th day of June, 1911, when the same were surrendered to said Smelting Company and new certificates therefor were issued by it to said Bankers Trust Company; that at all times prior to said 20th day of June, 1911, the said Imperial Copper Company voted the said shares of stock at all

stockholders meetings of the Smelting Company.

30. That thereafter, and on or about the 21st day of December, 1908, and in pursuance of the agreement just above mentioned, and contemporaneously with the execution thereof, the Imperial Copper Company delivered to the Bankers Trust Company proper certificates for all of the shares of stock mentioned in said agreement, said certificates being then and there duly assigned in blank by the registered holder thereof, in the usual form for stock exchange delivery. Said certificates, so assigned, remained in the exclusive possession of the Bankers [59] Trust Company until on or about June 20, 1911, when the same were by the Bankers Trust Company surrendered for cancellation and reissue, whereupon the same were cancelled and reissued, in the name of Bankers Trust Company, as Trustee. And said stock was thereupon transferred and reissued on the books of the said Smelting Company, in the name of Bankers Trust Company, as such Trustee, and proper certificates for said stock were issued and delivered to said Bankers Trust Company, as Trustee under said mortgage, and remained in the exclusive possession of the Bankers Trust Company until the same were delivered by it to the Receiver of the Imperial Copper Company, appointed by the District Court of the First Judicial District of the Territory of Arizona, in and for the county of Pima, in a certain foreclosure suit brought by said Bankers Trust Company against the Imperial Copper Company to foreclose the said mortgage and the lien

of the collateral security aforesaid, as hereinafter set forth.

31. That on the 3d day of July, 1911, the Bankers Trust Company filed a suit before the District Court of the First Judicial District of the Territory of Arizona against the said Imperial Copper Company, wherein it sought to foreclose the said deed of trust, and its said lien upon said shares of stock, so pledged with it, as aforesaid, by reason of default having been made in the payment of the interest on the \$2,000,000 of bonds issued by the Imperial Copper Company, and secured by said mortgage or deed of trust, and by said shares of stock.

32. That the said John H. Martin, as Trustee in Bankruptcy of said Imperial Copper Company, did, on the 9th day of July, 1914, file in the Superior Court of the State of Arizona, in and for the County of Pima, being the successor of the [60] District Court of the First Judicial District of the Territory of Arizona, aforesaid, his petition in the said suit of Bankers Trust Company vs. Imperial Copper Company, to foreclose the said mortgage and lien, as aforesaid, wherein he prayed for an order authorizing him, said John H. Martin, as Trustee in Bankruptcy of the Imperial Copper Company, to appear and intervene in and make defense to said action; which petition was thereafter granted, and the said John H. Martin, as Trustee, did file his answer in the said action of said Bankers Trust Company against said Imperial Copper Company, wherein he did, amongst other things, claim, as such Trustee, the right to the custody and control of all

of the shares of stock aforesaid, of said Southern Arizona Smelting Company, and did deny the validity of the lien thereon of the Bankers Trust Company and the validity of the assignment and transfer of said shares to said Bankers Trust Company, security as aforesaid.

33. That thereafter, and on the 28th day of December, 1914, findings of fact and conclusions of law and judgment were duly made, entered and rendered by the said Superior Court of the County of Pima, State of Arizona, in the said suit of Bankers Trust Company, plaintiff, against Imperial Copper Company, defendant, and John H. Martin, Trustee in Bankruptcy of the Imperial Copper Company, a corporation, Intervenor, wherein that court did adjudge that said Bankers Trust Company should recover from the Imperial Copper Company the sum of \$2,701,452.32 and costs, with interest, the payment of all of which was agreed to be secured by the lien of the said mortgage, supplemental agreement and pledge of stock hereinbefore mentioned, and did further adjudge that the said 9,000 shares of the capital stock of said Southern Arizona Smelting Company were duly pledged by the Imperial Copper Company to said Bankers Trust [61] Company, as Trustee, and that the certificates therefor were all in the custody and control of the Receiver of said court; it was further adjudged, amongst other things, that the lien and pledge upon said shares of stock should be foreclosed and that said shares of stock should be sold by a Special Master, appointed by the Court, the proceeds of the sale

to be applied as in said judgment and decree directed, from which said judgment the said John H. Martin, Trustee, appealed to the Supreme Court of Arizona, and which appeal is now pending and undetermined.

34. That thereafter, and in pursuance of said judgment and decree of said Superior Court, the Special Master of said court did sell all of the said 9,000 shares of the capital stock of said Southern Arizona Smelting Company, being all of the issued and outstanding shares of stock of said company, to one Leo Goldschmidt; that said sale was confirmed by said Superior Court, and thereafter, and on the 19th day of April, 1915, the said Special Master did execute an assignment and bill of sale, selling, assigning and transferring to said Leo Goldschmidt all of the said shares of stock of the said Southern Arizona Smelting Company which theretofore had been owned by the Imperial Copper Company, and had been by it pledged as collateral security with the said Bankers Trust Company, as aforesaid.

35. That in the said suit of Bankers Trust Company for the foreclosure of said trust deed and said pledge of stock, aforesaid, said Superior Court did make and file findings of fact which are binding and conclusive upon John H. Martin, Trustee of Imperial Copper Company, in the present case, he having been a party to the suit aforesaid.

That amongst other things the said Superior Court in said suit aforesaid, did adjudge and find as a fact the following:

That on or about December 21, 1908, said Imperial

Copper Company duly assigned to the Bankers Trust Company all of the [62] capital stock, consisting of 9,000 shares, of the Southern Arizona Smelting Company, as additional collateral to secure the payment of the principal and interest of the said bonds, aforesaid, and that contemporaneously therewith said Imperial Copper Company did deliver to the Bankers Trust Company proper certificates for all of said shares of stock, duly assigned in blank by the registered holder thereof, in the usual form for stock exchange delivery; that said certificates so assigned, remained in the possession of the Bankers Trust Company until on or about June 20, 1911, when the same were surrendered by it for cancellation and reissue, whereupon the same were cancelled and were reissued to said Bankers Trust Company as Trustee, and said stock was thereupon transferred and reissued on the books of said Southern Arizona Smelting Company to said Bankers Trust Company as Trustee, and proper certificates of stock were issued and delivered to it, as Trustee under the said mortgage, and that at the time of the commencement of the said action to foreclose said mortgage and deed of trust and lien aforesaid, the said Bankers Trust Company was the duly registered holder of all of the stock of said Southern Arizona Smelting Company, except as to qualifying shares for directors, certificates for which the said Bankers Trust Company holds in its custody, duly assigned.

Said Court further found as a fact: The Development Company of America being then the owner

and holder of a majority of the bonds issued under said mortgage and being also the owner and holder of a controlling interest in the capital stock of defendant (Imperial Copper Company) had theretofore loaned certain moneys to defendant (Imperial Copper Company) represented by its promissory notes delivered to said Development Company, and defendant (Imperial Copper Co.) was then in need of additional funds which it sought to borrow from said Development Company. It was necessary for the Development Company to borrow any funds [63] which it might lend to defendant (Imperial Copper Co.) and to deposit as collateral for the payment of such sums, the bonds and promissory notes of the defendant (Imperial Copper Co.) held by the Development Company.

At the suggestion of the Development Company, the defendant (Imperial Copper Company) executed and delivered the supplemental agreement together with the certificate of stock therein mentioned to the trustee (Bankers Trust Company) and the Development Company thereafter borrowed further sums of money upon said bonds and notes as collateral security and loaned large sums thereof to the defendant (Imperial Copper Co.). The shares of the capital stock of the Smelting Company were assigned and delivered to plaintiff as trustee upon the further consideration that the trustee should release from the lien of the mortgage, certain real estate upon which it was intended by the Smelting Company to construct its smelter; said real estate was thereupon so released and conveyed to the

Smelting Company, and the Smelting Company thereafter erected its smelter thereon. The bonds described in and issued under said mortgage are held and owned by upwards of fifty different individuals and corporations.

36. That on the 3d day of July, 1911, M. P. Freeman was appointed Receiver of said court, to take possession of all of said mortgaged property, and the said shares of stock, and that, as such Receiver, he did take possession, amongst other things, of the said shares of stock of said Southern Arizona Smelting Company, and the same had at all times been subject to his control and the order of said court.

That the Superior Court did, on the 28th day of December, 1914, in the case aforesaid, render its judgment and decree foreclosing the lien and pledge upon said shares of stock, and directing the same to be sold by the said Receiver, as Special [64] Master of said court, and the same were thereafter sold by said Receiver and Special Master to Leo Goldschmidt, and said sale was confirmed by said Superior Court, and an assignment of said shares was made by said Receiver and Special Master, to said Leo Goldschmidt, on the 19th day of April, 1915, and neither the Imperial Copper Company nor the said Bankers Trust Company nor John H. Martin, as Trustee in Bankruptcy of said Imperial Copper Company, have any right, title or interest, in or to the said shares of the capital stock of said Southern Arizona Smelting Company, or any thereof.

Dated at Tucson, Arizona, this 14th day of June,
1916.

WM. H. SAWTELLE,
Judge.

[Endorsements]: In the U. S. District Court, District of Arizona. In the Matter of The Southern Arizona Smelting Company, a Corporation, Bankrupt. Findings of Fact. Slag Dump and Flue Dust. Filed June 14th, A. D. 1916. Mose Drachman, Clerk. [65]

*In the United States District Court, for the District
of Arizona.*

IN EQUITY—No. E-47 (TUCSON).

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation,
Bankrupt.

JOHN H. MARTIN, Trustee in Bankruptcy of
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,
Plaintiff,

vs.

M. P. FREEMAN, Trustee in Bankruptcy of
SOUTHERN ARIZONA SMELTING COMPANY, a Corporation,
Defendant.

Conclusion of Law.

The Court having heretofore made and filed its Findings of Fact in the above-entitled matter, does

now make its Conclusions of Law therefrom, as follows:

CONCLUSIONS OF LAW.

That the Southern Arizona Smelting Company, a corporation, was a subsidiary of the Imperial Copper Company, a corporation, created and used by the Imperial Copper Company for its convenience in the transaction of its business; that said Imperial Copper Company was the parent corporation of said Southern Arizona Smelting Company, and used said Southern Arizona Smelting Company as an adjunct, agent and instrumentality in the transaction of its business.

That all of the ores shipped by the Imperial Copper Company to the Southern Arizona Smelting Company, and the title thereto, as well as the title to all of the flue dust and slag dump arising from the smelting of said ores by the Southern [66] Arizona Smelting Company remained in the Imperial Copper Company; that the contract under which said ores were so shipped by the Imperial Copper Company, and smelted by the Southern Arizona Smelting Company, constituted a bailment and not a sale; that said slag dump and flue dust is the property of the estate of the Imperial Copper Company, bankrupt, and John H. Martin, as Trustee in Bankruptcy of said Imperial Copper Company, bankrupt, is entitled to the possession of said property; and that the estate of said Southern Arizona Smelting Company has no title or right to the said slag dump and flue dust and that said M. P. Freeman, as Trustee in Bankruptcy of said South-

ern Arizona Smelting Company, bankrupt, has no right, title or interest in or to any of said property, and is not entitled to the possession thereof.

Dated at Tucson, Arizona, this 14th day of June, 1916.

WM. H. SAWTELLE,
Judge.

[Endorsements]: In the U. S. District Court, District of Arizona. In the Matter of Southern Arizona Smelting Company, a Corporation, Bankrupt. Conclusions of Law. Filed June 14th, A. D. 1916. Mose Drachman, Clerk. [67]

In the United States District Court, for the District of Arizona.

IN EQUITY—No. E-47 (TUCSON).

JOHN H. MARTIN, Trustee in Bankruptcy of
THE IMPERIAL COPPER COMPANY, a
Corporation, Bankrupt,
Plaintiff,

vs.

M. P. FREEMAN, Trustee in Bankruptcy of
THE SOUTHERN ARIZONA SMELTING
COMPANY, a Corporation, Bankrupt,
Defendant.

Decree.

This cause coming on to be further heard at this term on the 14th day of June, A. D. 1916, the same having been heretofore argued by respective counsel and submitted to the Court; and the parties having

heretofore stipulated and agreed in open court to the findings of fact herein, which said findings of fact the Court did adopt and file as its findings of fact herein; the plaintiff appearing by his counsel, Francis M. Hartman, Esq., and Edwin F. Jones, Esq., and the defendant appearing by his counsel, Selim M. Franklin, Esq., and the Court being now fully advised in the premises, thereupon, upon consideration thereof, it was ordered, adjudged and decreed, as follows:

(1) That the estate of said The Imperial Copper Company, a corporation, bankrupt, is the owner of all of that certain property mentioned and described in the petition of John H. Martin, Trustee in Bankruptcy of the Estate of The Imperial Copper Company, a corporation, bankrupt, on file herein, to wit:

A certain lot of flue dust, estimated to contain ten thousand (10,000) tons, more or less; and also a certain slag dump, all situated at the smelting plant of said Southern Arizona Smelting Company, a corporation, bankrupt, at the town of Sasco, Pinal County, Arizona, and that the said John H. Martin, Trustee in Bankruptcy of the estate of said [68] Imperial Copper Company, a corporation, bankrupt, is entitled to the possession of all of said flue dust and slag.

(2) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that neither the estate of the said Southern Arizona Smelting Company, a corporation, bankrupt, nor the said M. P. Freeman, Trustee in Bankruptcy of the said estate of the Southern

Arizona Smelting Company, a corporation, bankrupt, has any right, title or interest whatsoever in or to any of said flue dust or said slag, and that the said M. P. Freeman, as such trustee of the Southern Arizona Smelting Company, a corporation, bankrupt, is not entitled to the possession of the same.

(3) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said M. P. Freeman, Trustee in Bankruptcy of said Southern Arizona Smelting Company, a corporation, bankrupt, be and he hereby is ordered and directed to turn over and deliver unto the said John H. Martin, Trustee in Bankruptcy of the estate of said Imperial Copper Company, a corporation, bankrupt, all of said flue dust and slag, and

(4) IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the said John H. Martin, Trustee in Bankruptcy of the estate of said Imperial Copper Company, a corporation, bankrupt, do have and recover of and from the estate of said Southern Arizona Smelting Company, a corporation, bankrupt, and from M. P. Freeman, Trustee in Bankruptcy of said estate of said Southern Arizona Smelting Company, a corporation, bankrupt, his costs and disbursements incurred herein, amounting to the sum of Ten (\$10.00) Dollars.

Done in open court this 14th day of June, A. D. 1916.

WM. H. SAWTELLE,
Judge.

[Endorsements]: No. E.—. In the United States District Court for the District of Arizona.

John H. Martin, Trustee, etc., Plaintiff, vs. M. P. Freeman, Trustee, etc., Defendant. Decree. Filed June 14th, A. D. 1916. Mose Drachman, Clerk.
[69]

*In the United States District Court, for the District
of Arizona.*

MINUTE ENTRY—June 14, 1916.

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.

JOHN H. MARTIN, Trustee in Bankruptcy of
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Plaintiff,

vs.

M. P. FREEMAN, Trustee in Bankruptcy of
SOUTHERN ARIZONA SMELTING COMPANY, a Corporation,

Defendant.

Order Allowing Appeal.

Upon the rendering of the decree herein in the above-entitled cause on this date, M. P. Freeman, Trustee of Southern Arizona Smelting Company, a corporation, Bankrupt, defendant, by Selim M. Franklin, his solicitor and attorney, gave notice in open court of his appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the said judgment and decree of this court, and at the same time did file herein his assignments of error.

The Court did then order, as no bond was required from said Trustee, that an appeal to the United

States Circuit Court of Appeals for the Ninth Circuit from the judgment and decree this day rendered herein, be, and the same is hereby allowed to the said M. P. Freeman, Trustee of Southern Arizona Smelting Company, a corporation, Bankrupt, defendant, and that a certified transcript be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit, as provided by law and the rules of said court.

[Endorsements]: In the U. S. District Court for the District of Arizona. In the Matter of Southern Arizona Smelting Co., a Corporation, Bankrupt, John H. Martin, Trustee of Imperial Copper Company, a Corporation, Bankrupt, Plaintiff, vs. M. P. Freeman, Trustee of Southern Arizona Smelting Company, a Corporation, Bankrupt, Defendant. Minute Entry on Appeal. [70]

*In the United States District Court, for the District
of Arizona.*

IN EQUITY—No. E-47 (TUCSON).

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.

JOHN H. MARTIN, Trustee in Bankruptcy of
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Plaintiff,

vs.

M. P. FREEMAN, Trustee in Bankruptcy of
SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt,

Defendant.

**Assignments of Error of M. P. Freeman, Trustee in
Bankruptcy of Southern Arizona Smelting
Company, a Corporation, Bankrupt.**

Comes now on this 14th day of June, 1916, defendant M. P. Freeman, Trustee in Bankruptcy of Southern Arizona Smelting Company, a corporation, Bankrupt, and files in open court the following Assignments of Error upon which he will rely upon the prosecution of his appeal in the above-entitled cause, being the appeal from the judgment and decree entered herein by the above-entitled court on this 14th day of June, 1916.

I.

The Court erred in its conclusions of law from the Findings of Fact as made and filed herein, which said conclusions of law, so assigned as erroneous, are as follows:

“That the Southern Arizona Smelting Company, a corporation, was a subsidiary of the Imperial Copper Company, a corporation, created and used by the Imperial Copper Company for its convenience in the transaction of its business; that said Imperial Copper Company was the parent corporation of said Southern Arizona Smelting [71] Company and used said Southern Arizona Smelting Company as an adjunct, agent and instrumentality in the transaction of its business.

“That all of the ores shipped by the Imperial Copper Company to the Southern Arizona

Smelting Company, and the title thereto, as well as the title to all of the flue dust and slag dump arising from the smelting of said ores by the Southern Arizona Smelting Company remained in the Imperial Copper Company; that the contract under which said ores were so shipped by the Imperial Copper Company, and smelted by the Southern Arizona Smelting Company, constituted a bailment and not a sale; that said slag dump and flue dust is the property of the estate of the Imperial Copper Company, Bankrupt, and John H. Martin, as Trustee in Bankruptcy of said Imperial Copper Company, Bankrupt, is entitled to the possession of said property; and that the estate of said Southern Arizona Smelting Company has no title or right to the said slag dump and flue dust and that said M. P. Freeman, as Trustee in Bankruptcy of said Southern Arizona Smelting Company, Bankrupt, has no right, title or interest in or to any of said property, and is not entitled to the possession thereof."

II.

The Court erred, under the findings of fact as agreed to and filed herein, in finding, adjudging and decreeing that the estate of the Imperial Copper Company, a corporation, bankrupt, is the owner, and that John H. Martin, as Trustee in Bankruptcy of the Imperial Copper Company, a corporation, bankrupt, is entitled to the possession of said flue dust and slag dump mentioned in said decree; and in not adjudging and decreeing the estate of the

Southern Arizona Smelting Company, a corporation, bankrupt, to be the owner thereof, and M. P. Freeman, its Trustee in Bankruptcy, to be entitled to the possession thereof.

III.

The Court erred in adjudging and decreeing that neither the estate of the said Southern Arizona Smelting Company, a corporation, bankrupt, nor the said M. P. Freeman, Trustee in Bankruptcy of the said estate of said Southern Arizona Smelting Company a corporation, bankrupt, has any right, title, or interest whatsoever in said flue dust or slag dump, and in further adjudging and decreeing that said M. P. Freeman, as such Trustee, was not entitled to the possession of the same; and in ordering and directing the said M. P. Freeman, as Trustee, as aforesaid, to turn over and deliver unto the [72] said John H. Martin, Trustee in Bankruptcy of the estate of said Imperial Copper Company, a corporation, bankrupt, all or any of said flue dust and slag.

IV.

The Court erred, under the findings of fact as made and found by the Court, in not adjudging and decreeing that the title and ownership of said slag dump and flue dust was in the Southern Arizona Smelting Company; and that the title and right of possession thereto passed to said M. P. Freeman, as its Trustee in Bankruptcy, to be administered as part of the assets of said bankrupt estate.

V.

That under the findings of fact as made and found by the Court in this case, said M. P. Freeman, as

Trustee of Southern Arizona Smelting Company, a corporation, bankrupt, was entitled to a judgment and decree, adjudging him as such Trustee to be vested with the title to said slag dump and flue dust and adjudging him to be entitled to the possession thereof, as such Trustee, to be administered upon as part of the assets of said bankrupt estate, and the Court erred in not rendering its judgment under the facts as found by the Court, in favor of said M. P. Freeman, as such Trustee, as aforesaid.

WHEREFORE, the said M. P. Freeman, as Trustee, as aforesaid, prays that the judgment and decree herein be reversed, and that a mandate issue directing that said District Court of the United States for the District of Arizona, to enter judgment and decree adjudging and decreeing the said M. P. Freeman, as Trustee of Southern Arizona Smelting Company, a corporation, bankrupt, to be vested with the title, and to be entitled to the possession [73] of the said slag dump and flue dust, and that the said John H. Martin, as Trustee of the said Imperial Copper Company, a corporation, bankrupt, has no title or right of possession thereof.

SELIM M. FRANKLIN,

Attorney for M. P. Freeman, Trustee of Southern Arizona Smelting Company, a Corporation, Bankrupt, Defendant.

[Endorsements]: In the U. S. District Court for the District of Arizona. In the Matter of Southern Arizona Smelting Co., a Corporation, Bankrupt, John H. Martin, Trustee of Imperial Copper Com-

pany, a Corporation, Bankrupt, Plaintiff, vs. M. P. Freeman, Trustee of Southern Arizona Smelting Company, a Corporation, Bankrupt, Defendant. Assignments of Error of M. P. Freeman, Trustee in Bankruptcy of Southern Arizona Smelting Company. Copy received June 14, 1916. Francis H. Hartman, Atty. for Ptff. Filed June 14th, A. D. 1916. Mose Drachman, Clerk. [74]

*In the United States District Court, for the District
of Arizona.*

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.

JOHN H. MARTIN, Trustee in Bankruptcy of
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Plaintiff,

vs.

M. P. FREEMAN, Trustee in Bankruptcy of
SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt,

Defendant.

Notice of Appeal.

Now comes the above-named M. P. Freeman, Trustee in Bankruptcy of Southern Arizona Smelting Company, a corporation, bankrupt, defendant herein, by Selim M. Franklin, his attorney, in open court, on this 14th day of June, 1916, and at the time of the rendition and signing of the judgment and decree in the above-entitled case, and conceiving

himself aggrieved by the judgment and decree rendered by the Court herein; does hereby appeal from the said decree and the whole thereof, to the United States Circuit Court of Appeals for the Ninth Circuit, and he prays that this appeal may be allowed and that a transcript of the record and proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Circuit Court of Appeals.

SELIM M. FRANKLIN,
Solicitor for M. P. Freeman, Trustee of Southern
Arizona Smelting Company, a Corporation,
Bankrupt, Defendant.

Dated at Tucson, June 14, 1916. [75]

And now, to wit, on June 14th, 1916, it is ordered that the appeal be allowed as prayed for.

WM. H SAWTELLE,
Judge.

[Endorsements]: In the U. S. District Court for the District of Arizona. In the Matter of Southern Arizona Smelting Company, a Corporation, Bankrupt. John H. Martin, Trustee of Imperial Copper Company, a Corporation, Bankrupt, Plaintiff, vs. M. P. Freeman, Trustee of Southern Arizona Smelting Company, a Corporation, Bankrupt, Defendant. Petition for Appeal. Filed June 14th, A. D. 1916. Mose Drachman, Clerk. [76]

*In the United States District Court for the District
of Arizona.*

In the Matter of SOUTHERN ARIZONA SMELT-
ING COMPANY, a Corporation, Bankrupt.
JOHN H. MARTIN, Trustee in Bankruptcy of
IMPERIAL COPPER COMPANY, a Cor-
poration, Bankrupt,

Plaintiff,

vs.

M. P. FREEMAN, Trustee in Bankruptcy of
SOUTHERN ARIZONA SMELTING COM-
PANY, a Corporation, Bankrupt,

Defendant.

**Order Extending Time to File Record and Docket
Cause to August 14, 1916.**

For good cause shown, the undersigned, the Judge who signed the citation in this appeal, does hereby order that the time to file the record in this case, and to docket this case with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and the return date of citation, be and the same is hereby enlarged and extended until the 14th day of August, 1916.

Dated this 14th day of June, 1916.

WM. H. SAWTELLE,

Judge of the United States District Court for the
District of Arizona.

[Endorsements]: In the U. S. District Court for the District of Arizona. In the Matter of Southern Arizona Smelting Co., a Corporation, Bankrupt.

John H. Martin, Trustee of Imperial Copper Company, a Corporation, Bankrupt, Plaintiff, vs. M. P. Freeman, Trustee of Southern Arizona Smelting Co., a Corporation, Bankrupt, Defendant. Order Enlarging Time to File Record and Docket Case. Filed June 14, 1916. Mose Drachman, Clerk. [77]

*In the United States District Court for the District
of Arizona.*

IN EQUITY—No. E-47 (TUCSON).

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.
JOHN H. MARTIN, Trustee of IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,
Plaintiff,

vs.

M. P. FREEMAN, Trustee of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt,
Defendant.

Praeipie for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record of this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the appeal heretofore perfected, and include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. Petition (Complaint of John H. Martin, Trustee).

2. Answer of M. P. Freeman, Trustee, defendant.
3. Stipulation of Parties, filed June 14, 1916.
4. Findings of Fact.
5. Conclusions of Law.
6. Judgment and Decree.
7. All minute entries made in said case on June 17, 1916, including the *nunc pro tunc* order; Order for Judgment, and Notice of Appeal and allowance thereof in open court.
8. Assignments of Error of M. P. Freeman, Trustee.
9. Petition for Appeal and Order Allowing Appeal.
10. Order Enlarging Time for Transmitting Record, filed June 14, 1916.
11. This Praecipe. [78]
12. Clerk's Certificate.

The said transcript to be filed with the clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, before August 14, 1916.

SELIM M. FRANKLIN,

Solicitor for M. P. Freeman, Trustee, Appellant.

Service of copy accepted this 14th day of June, 1916.

FRANCIS M. HARTMAN,

Attorney for John H. Martin, Trustee, Plaintiff.

[Endorsements]: In Equity No. E-27—Tucson. In the U. S. District Court for the District of Arizona. In the Matter of Southern Arizona Smelting Co., a Corporation, Bankrupt. John H. Martin, Trustee of Imperial Copper Company, a Corpora-

tion, Bankrupt, Plaintiff, vs. M. P. Freeman, Trustee of Southern Arizona Smelting Company, a Corporation, Bankrupt, Defendant. Praecipe. Filed June 14th, A. D. 1916. Mose Drachman, Clerk.
[79]

*In the United States District Court for the District
of Arizona.*

IN EQUITY—No. E-47 (TUCSON).

In the Matter of SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt.
JOHN H. MARTIN, Trustee in Bankruptcy of
IMPERIAL COPPER COMPANY, a Corporation, Bankrupt,

Plaintiff,

vs.

M. P. FREEMAN, Trustee in Bankruptcy of
SOUTHERN ARIZONA SMELTING COMPANY, a Corporation, Bankrupt,
Defendant.

**Certificate of Clerk U. S. District Court to
Transcript of Record.**

United States of America,
District of Arizona,—ss.

I, Mose Drachman, Clerk of United States District Court for the District of Arizona, do hereby certify that the foregoing pages numbers 1 to 79 inclusive, constitute and are a true, complete and correct copy of the record, pleadings and proceedings had in the case of M. P. Freeman, Trustee of Southern Arizona

Smelting Company, a Corporation, Bankrupt, Appellant, vs. John H. Martin, Trustee of The Imperial Copper Company, a Corporation, Bankrupt, Appellee, No. E-47 (Tucson), as called for in the praecipe filed herein, as the same appears on file and of record in said District Court.

I further certify that the cost of preparing and certifying said record amounts to the sum of \$51.30 and that the same has been paid in full by the appellant, M. P. Freeman, Trustee of Southern Arizona Smelting Company, a corporation, bankrupt.

In testimony whereof I have hereunto set my hand and affixed the seal of the United States District Court for the District of Arizona at Tucson, in said District, this 30th day of June, [80] in the year of our Lord one thousand nine hundred and sixteen, and of the Independence of the United States of America the one hundred and fortieth.

[Seal]

MOSE DRACHMAN,

Clerk United States District Court, District of Arizona.

By Effie D. Botts,

Deputy Clerk. [81]

[Endorsed]: No. 2824. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of Southern Arizona Smelting Company, a Corporation, Bankrupt. M. P. Freeman, as Trustee in Bankruptcy of Southern Arizona Smelting Company, a Corporation, Bankrupt, Appellant, vs. John

H. Martin, as Trustee in Bankruptcy of Imperial Copper Company, a Corporation, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Arizona.

Filed July 3, 1916.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

